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Contents

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

Separate Parts In This Issue

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

TB-91-003

RIN 0581-AA19

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended, requires the Secretary of Agriculture to fix and collect fees and charges for inspection, testing and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This rule will change the user fee charge from cents per pound to cents per kilogram. This change will simplify the billing procedures.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone—(202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is amending the regulations governing the inspection of imported tobacco by changing the user fee charge from cents per pound to cents per kilogram. A proposed rule was published in the **Federal Register** on April 18, 1991 (56 FR 15845). The proposed rule would change the fees and charges for inspection, testing and grading of imported tobacco from cents per pound to cents per kilogram. Interested persons were given 30 days to submit comments. No comments were received.

This action is needed to simplify the billing procedures for the collection of fees charged for inspection, grading, and testing of tobacco imported into the United States. The U.S. Customs Service requires importers to report weight in kilograms. This requires a conversion to be made from kilograms to pounds. Basing the rate on kilograms would eliminate the need for conversion with its potential for errors.

The current fee of $.0045 per pound for inspection of imported tobacco will be changed to $.0099 per kilogram. The current fee of $.0035 per pound for sampling, testing, and certification of imported tobacco will be changed to $.0077 per kilogram. Also, the current additional fee of $.0035 per pound for testing imported tobacco not accompanied by a certification that it is free of prohibited pesticide residues will be changed to $.0077 per kilogram. The authority for this proposed regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

This rule has been reviewed under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The Administrator, Agricultural Marketing Service, has determined that the rule would not have a significant economic impact on a substantial number of small entities. The rule would not substantially affect the normal movement of the commodity in the marketplace.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the Executive Order.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the regulations in 7 CFR part 29 are amended as follows:

PART 29—[AMENDED]

1. The authority citation for subpart B of 7 CFR part 29 continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.500 is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

(a) The fee for inspection of imported tobacco is $.0099 per kilogram and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

(b) The fee for sampling, testing, and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0077 per kilogram and shall be paid by the importer.

(c) The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional $.0077 per kilogram. The minimum fee assessed pursuant to this paragraph shall be $162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: July 19, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-17602 Filed 7-24-91; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV-91-292FR]

Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This final rule approves a budget of expenditures and establishes an assessment rate for the 1991–92 fiscal year (July 1–June 30) under Marketing Order No. 928. This action authorizes the Papaya Administrative Committee (PAC) established under this order to incur expenses and collect assessments from handlers to pay those expenses.

This action will enable the PAC to perform its duties and the marketing order to operate.

EFFECTIVE DATE: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulations under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. the majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the PAC and submitted to the Department for approval. The PAC members are handlers and producers of Hawaiian papayas. They are familiar with the PAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the PAC is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the PAC's expected expenses. The annual budget and assessment rate are usually acted upon by the PAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the PAC will have funds to pay its expenses.

The proposed rule concerning the 1991–92 budget was published in the **Federal Register** (56 FR 29195, June 26, 1991). Comments on the proposed rule were invited from interested persons until July 8, 1991. No comments were received.

The PAC met on May 2, 1991, and recommended a 1991–92 budget with expenditures of $746,650 and an assessment rate of $0.0085 per pound of assessable papayas shipped. The vote on the 1991–92 budget was nine in favor and two opposed. The two members who voted against the recommendation did so because they wanted a lower budget and assessment rate.

The 1991–92 budget of $746,650 is generally similar in size and scope to the 1990–91 approved budget of $827,837, except for reductions of $50,000 research and $20,000 in travel.

The 1991–92 budget contains $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development. Budgeted expenditures for 1990–91 were $367,837 for program administration, $400,000 for advertising and promotion, and $60,000 for research and development. The 1991–92 advertising, promotion, and research projects will be submitted for approval as soon as the 1991–92 budget is approved.

PAC income for 1991–92 is expected to amount to $748,660. Assessment income is estimated at $467,500, based on projected shipments of 55,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $10,000 from miscellaneous sources including interest. Projected 1991–92 income over expenses ($2,010) would be placed in the PAC's operating reserve. The operating reserve, which is projected to amount to $49,235 on July 1, 1991, is well within the amount authorized under the marketing order.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds a new § 928.221 under this marketing order, based on the PAC's recommendations and other information.

After consideration of all relevant matter presented, the information and recommendations submitted by the PAC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 533, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because approval of the expenses and assessment rate must be expedited. This marketing order's fiscal year began on July 1, 1991. The PAC needs authorization to incur expenses and sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.221 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

§ 928.221 Expenses and assessment rate.

Expenses of $746,650 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1992. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: July 22, 1991.

William J. Doyle,

Director, Fruit and Vegetable Division.

[FR Doc. 91-17712 Filed 7-24-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 563

[No. 91-154]

RIN 1550-AA26

Transactions With Affiliates and Subsidiaries Loans to One Borrower Limitations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the "OTS"), pursuant to and in accordance with sections 4(a), 10(d) and 11 of the Home Owners' Loan Act (HOLA), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183, is amending its regulations pertaining to transactions between savings associations and their subsidiaries and affiliates. The amendments (i) define and clarify the applicability to thrifts of the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act (FRA), 12 U.S.C. 371c and 371c-1, (ii) clarify the additional limitations imposed on savings association transactions with affiliates pursuant to section 11 of the HOLA, and (iii) pursuant to section 11(a)(4) of the HOLA, impose certain additional regulatory restrictions and safeguards in connection with the application of sections 23A and 23B to transactions between savings associations and their subsidiaries and affiliates. The rule is structured as a comprehensive set of restrictions and prohibitions, rather than as piecemeal supplements to sections 23A and 23B, because of the pervasive and often complex nature of the differences between the application of those sections, on the one hand, and the more stringent treatment provided for savings associations under section 11 of the HOLA and certain provisions of this rule, on the other hand.

In addition, the OTS, pursuant to and in accordance with sections 3(b), 4(a) and 5(u) of the HOLA, is amending its regulations pertaining to loans-to-one-borrower limitations. The first amendment, relating to the scope of the rule, is necessitated by revisions made today to the final transactions-with-affiliates rule. The second amendment merely clarifies the operation of section 5(u)(2)(A)(i) of the HOLA.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Aline J. Henderson, Staff Attorney, Corporate and Securities Division (202) 906-7308; V. Gerard Comizio, Senior Associate Chief Counsel/Director, Corporate and Securities Division (202) 906-6411; Julie L. Williams, Senior Deputy Chief Counsel (202) 906-6459; C. Dawn Causey, Attorney, Office of Enforcement (202) 906-7157; Michael P. Scott, Program Manager, Affiliates Policy, Supervision Policy (202) 906-5748; or Kevin L. Petrasic, Assistant Chief Counsel (202) 906-6452; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 11 of the HOLA, 12 U.S.C. 1468, added by the FIRREA, provides that "[s]ections 23A and 23B of the FRA shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank [as defined in such Act] * * *" [1] In addition, however, this general parity with banks is made subject to several important differences.

First, a savings association may not make any loan or extension of credit to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i) of the HOLA, i.e., permissible bank holding company activities.[2] Next, a savings association also is barred from entering into any transaction of the type described in section 23A(b)(7)(B) of the FRA, *i.e.*, investing in the securities of an affiliate, other than with respect to shares of a subsidiary of the association.[3] Finally, the so-called "sister bank" exemption from the quantitative limitations of section 23A, which is available to 80 percent commonly-controlled banks pursuant to section 23A(d)(1), generally is not available to "sister thrifts" until January 1, 1995.[4] The exemption is available on a limited basis, however, for transactions between banks and thrifts that are "sisters" in the same bank and thrift holding company, where the thrift is at least 80 percent owned by the same company that also controls a bank, provided every savings association and every bank owned by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.[5]

In addition to the above-referenced limitations and those imposed under sections 23A and 23B, section 11 provides that the OTS may impose such additional restrictions on any transaction between any savings association and any affiliate as the Director determines to be necessary to protect the safety and soundness of the association.[6] The OTS also has broad additional authority to promulgate regulations to ensure the safe and sound operations of savings associations pursuant to section 4 of the HOLA.

For purposes of applying the provisions of sections 23A and 23B of the FRA to savings associations, section 11 of the HOLA provides that an "affiliate" of a savings association includes any company that would be an "affiliate," as defined in section 23A, of such savings association if such association were a "member bank." [7]

Finally, section 11 also provides that the OTS has authority to enforce sections 23A and 23B (and 22(h)) [8] of the FRA as they apply to thrifts.[9] Violations of these sections are subject to penalties that range from $5,000 per day for "first tier" offenses, up to the lesser of $1 million or 1 percent of the association's assets for "third tier" violations.[10]

The discussion of the final rule and related matters below is divided into the following sections:

I. Background
II. Summary of Comments
- A. Treatment of Subsidiaries
- B. Section 23A Calculations
- C. Recordkeeping and Notice Requirements
- D. Expansion of the Definition of "Covered Transaction"

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[1] 12 U.S.C. 1468(a)(1).

[2] 12 U.S.C. 1468(a)(1)(A).

[3] 12 U.S.C. 1468(a)(1)(B).

[4] 12 U.S.C. 1468(a)(2)(B).

[5] 12 U.S.C. 1468(a)(2)(A).

[6] 12 U.S.C. 1468(a)(4).

[7] 12 U.S.C. 1468(a)(3).

[8] New section 11 of the HOLA also provides that section 22(h) of the FRA, covering extensions of credit to executive officers, directors, and principal shareholders of a bank, is applicable to savings associations in the same manner and to the same extent as if the savings association were a "member bank." The OTS is reviewing the scope of these provisions and the existing OTS "Conflicts Rules" and will determine if an additional rulemaking project to integrate the two is appropriate.

[9] 12 U.S.C. 1468(c).

[10] 12 U.S.C. 1828(j) (4) and (5).

I. Background

On March 27, 1990, the OTS issued a proposal to apply sections 23A and 23B to savings associations, to incorporate extensive changes in terminology to reflect the application of those provisions to savings associations, and to implement the various special provisions of section 11 that are uniquely applicable to thrifts. Moreover, pursuant to the OTS's authority under section 11(a)(4), the proposal in certain respects differed from, and was more stringent than, the statutory provisions of sections 23A and 23B. See 55 FR 11311 (March 27, 1990).

In many respects, the final rule is similar to the rule as proposed in March 1990.[11] However, in response to comments received, the proposal has been revised in certain critical aspects, discussed below, most notably with regard to the determination reflected in the final rule generally not to treat subsidiaries of thrifts as "affiliates." The rule is effective August 26, 1991.

II. Summary of Comments

The OTS received a total of 84 comment letters from 80 different commenters. Those who submitted comments included: 60 savings associations and related companies; 12 trade associations; 8 law firms; 2 state regulators; one public interest group and one United States Senator.

A. Treatment of Subsidiaries

Virtually all commenters vigorously objected to the treatment of certain subsidiaries of savings associations as "affiliates." According to the proposal, a "subsidiary" of a savings association would be defined as a company that (i) is engaged exclusively in activities permissible for a Federal association, (ii) is controlled by the savings association, and (iii) the voting stock of which is eligible to be held only by savings associations. Any savings association's subsidiary not meeting the three-pronged definitional standard ("nonconforming subsidiary") would have been an "affiliate" of its parent association under the proposal and would have been subject to the various restrictions imposed on transactions with affiliates by sections 23A and 23B of the FRA as applied and augmented by section 11(a) of the HOLA.

The OTS specifically solicited comments on whether the proposed approach would be too restrictive on the operations of thrifts and what activities might be adversely affected. Only two commenters favored this approach; the remaining eight-two expressed strong disapproval. The OTS also indicated that it was considering four alternative approaches to the proposed treatment of subsidiaries and sought comments on the merits and deficiencies of each.

The general opposition to the proposed treatment of subsidiaries followed four lines of argument: (i) The OTS lacks statutory authority to broaden the definition of affiliate; (ii) the expansion of the "affiliate" definition runs counter to an explicit congressional intent in enacting the FIRREA generally to establish parity between banks and thrifts in the affiliate transactions area; (iii) the proposed treatment of subsidiaries constitutes an unwarranted departure from the overall statutory scheme established in FIRREA for insulating thrifts from the potentially risky activities of their subsidiaries and is inconsistent with existing regulatory restraints; and (iv) the limitation on dealings with subsidiaries engaged in historically profitable and desirable activities will result in undue economic harm. Commenters argued that it would cause dislocations including outright divestitures, further devalue the thrift charter, and hamper the efforts of the Resolution Trust Corporation to dispose of ailing thrifts. Upon review of these arguments, the OTS has determined that some have substantial merit and, as discussed at part III.A below, has revised the final rule to eliminate the proposed special treatment of nonconforming subsidiaries.

B. Section 23A Calculations

Although no commenters disputed the OTS's proposed approach to calculating outstanding covered transactions, various commenters opposed the inclusion of all covered transactions entered into and executed prior to August 9, 1989, in the overall calculation. The opposition was generally grounded in what was perceived to be an unfair retroactive imposition of a statutory restriction made applicable to thrifts only upon the date of enactment of FIRREA. Particular concerns were expressed regarding the effect of including transactions with nonconforming subsidiaries that would be deemed "affiliates" under the proposal. Commenters requested that the OTS grandfather or otherwise discount transactions entered into prior to the enactment of FIRREA.

In the interests of safety and soundness, the OTS has determined that institutions should strive to achieve compliance with the limitations of section 23A as soon as feasible, and that transactions entered into prior to the enactment of FIRREA, if they would otherwise be deemed to be outstanding covered transactions, should be included in calculating an association's covered transactions. In the event this results in an association's covered transactions with any single affiliate, or with all affiliates in the aggregate, exceeding the applicable limits of section 23A, the OTS expects the association to take steps that are reasonably practicable to reduce its covered transactions to permissible levels. OTS will not deem pre-FIRREA transactions to be violations of section 23A, but an association may not enter into new covered transactions unless and until its existing covered transactions are reduced below permissible limits, and then, only to the extent allowable under section 23A. In addition, renewals or extensions of all loans (including pre-FIRREA loans) must conform to the transactions-with-affiliates limitations of section 23A and section 11 of the HOLA if such renewal or extension was made on or after the date of enactment of FIRREA. The OTS believes this issue should be significantly more manageable for associations given the decision not to treat nonconforming subsidiaries as "affiliates" as was originally proposed.

In a related issue, a number of commenters took issue with the OTS's statement that the term "capital stock and surplus" refers to "tangible capital" for purposes of measuring compliance with the quantitative limitations of section 23A. These commenters observed, among other things, that this position was contrary to current banking regulatory practices which, for example, allow goodwill to be counted for purposes of the term "capital stock and surplus" within the meaning of section 23A.

Banks carry significantly less goodwill than do thrifts, however, and thus, in practice, this has not been an important issue in the implementation of section 23A by the other banking regulators. Given the OTS's concern with allowing goodwill to be fully counted for

[11] 55 FR 11317–11318 (March 27, 1990).

purposes of measuring compliance with quantitative limits and in recognition of the congressionally provided phased-out allowance of supervisory goodwill in capital calculations by thrifts, the OTS has decided to revise the final rule to permit the inclusion of goodwill, to the extent it is includible in capital under the OTS's capital rules.

C. Recordkeeping and Notice Requirements

A substantial number of commenters opposed the recordkeeping requirements in the proposal on the grounds that these requirements would be expensive, administratively burdensome and duplicative of existing record maintenance procedures. The OTS believes the procedures proposed should be followed as a matter of sound business practices in order for institutions to monitor their own compliance with applicable regulations. These measures also are necessary to enable the OTS to monitor effectively savings associations' compliance with transactions-with-affiliates requirements, and to provide sufficient information for the OTS to be able to determine whether prior notification of transactions should be required or whether any entity should be deemed an "affiliate" of the thrift. The OTS has revised the proposal in two respects in this area, however, discussed below at part III.G.

D. Expansion of the Definition of "Covered Transaction"

In the preamble to the proposed rule, the OTS sought comments on expanding the definition of "covered transactions" "to include the payment of money to an affiliate under contract, lease, or otherwise (*e.g.*, pursuant to management contracts, etc.)." [12] Commenters uniformly rejected this approach, noting that such transactions are already subject to the "arms-length" requirements of section 23B of the FRA,[13] as incorporated in 12 CFR 563.42(a) of the proposal. These commenters also noted that banks were not subject to any comparable rule. The final rule accordingly does not expand the scope of what constitutes a "covered transaction."

III. Changes to the Proposed Rule

A. Treatment of Subsidiaries

Under the proposal, any savings association subsidiary that is not exclusively engaged in activities permissible for a Federal association generally would have been treated as an "affiliate" subject to the limitations and prohibitions of sections 23A and 23B. Those subsidiaries engaged only in activities permissible for a Federal savings association would have been treated as part of the parent thrift for purposes of transactions with affiliates controls, provided that the thrift controlled the subsidiary and the voting stock of such subsidiary was eligible to be held only by a savings association.

The OTS has reconsidered this issue and the final rule excludes all subsidiaries of savings associations from treatment as "affiliates," except to the extent that subsidiaries may be deemed "affiliates" under § 563.41(b)(1)(v) and (2)(i).[14] The OTS is persuaded that subsidiaries of thrifts should not be treated differently from bank subsidiaries with regard to the basic scheme of transactions-with-affiliates controls applicable to them. This treatment concentrates transactions-with-affiliates restrictions on the risk of diversion of an association's financial resources to affiliates. Other FIRREA safeguards are sufficient to protect savings associations adequately against the risks presented by the activities of their subsidiaries. These risk-related safeguards include capital standards, service corporation investment limitations and new provisions of the Federal Deposit Insurance Act (FDIA) that govern establishment of, and activities conducted by, subsidiaries of savings associations. This regulation is also amending the loans-to-one-borrower regulation to require that loans by controlled subsidiaries be aggregated with the loans of the parent thrift to outside borrowers in order to address concentration risk.

The rule retains an additional provision that on a case-by-case basis the OTS may deem any entity, including an association's subsidiary, to be an "affiliate." An entity can be deemed an "affiliate" if its relationship to the association, or the nature or amount of its activities, its condition or the condition of its parent thrift, or other supervisory reasons, warrant such treatment in order to protect the safety and soundness of the savings association.

In addition to the above-noted changes, OTS is adopting as the definition of "subsidiary" for transactions-with-affiliates and loans-to-one borrower [15] purposes a modified version of the definition of the term "subsidiary" set forth in OTS's capital rules.[16] The capital rule definition, which includes an expansive list of entities in which a savings association holds a 5 percent or greater interest, serves as a useful starting point in crafting a definition of the term for other purposes. OTS is modifying that basic definition for transactions-with-affiliates and loans-to-one-borrower purposes, however, to provide that only "subsidiaries" that are controlled by a savings association will be "subsidiaries" within the meanings of those two rules.

As specified in today's final transactions-with-affiliates rule, the determination of whether a savings association is deemed to "control" a company will include the determinations of control set forth at 12 CFR part 574. As a result, companies in which a savings association owns less than a 10 percent interest will not be deemed "subsidiaries" for loans-to-one-borrower or transactions-with-affiliates purposes; whether companies in which a savings association owns a 10 percent or greater interest are "subsidiaries" will be determined in accordance with part 574 rules.

B. Definition of "Affiliate"

The OTS has revised the definition of "affiliate" in the final rule to include within such term any company in which the majority of its directors, partners or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association. This action has been taken in response to inquiries the OTS has received to make clear that a company that is a partnership [17] can be an affiliate, and is consistent with the position taken by the staff of the Federal Reserve Board (the FRB) on this issue.

The final rule also clarifies that companies that would be considered "affiliates" but for the fact that they are "subsidiaries" will nonetheless be treated as "affiliates" pursuant to new § 563.41(b)(2)(i) as revised, unless the OTS determines that such treatment is not warranted. For example, a company that is controlled directly by both a savings association and the savings association's holding company (e.g., other than through the savings

[12] 55 FR at 11318.

[13] See 12 U.S.C. 371c–1(a).

[14] The notice provisions of § 563.41(e) have also been revised to reflect this change.

[15] The "Scope" section of OTS's loans-to-one-borrower rule, as revised today, incorporates the definition of "subsidiary" set forth in today's transactions-with-affiliates final rule.

[16] See 12 CFR 567.1(dd).

[17] The definition of the term "company" in both the final rule and section 23A includes a "partnership." See 12 U.S.C. 371c(b)(6) and today's rule, § 563.41(b)(6).

association) will be deemed an "affiliate" rather than a "subsidiary" under the final rule. The OTS has concluded that this treatment is necessary for reasons of safety and soundness.

C. Section 23A Calculations—Definition of "Capital Stock and Surplus"

Under section 23A, the aggregate amount of "covered transactions" between a savings association (and its subsidiaries) and its affiliates is subject to quantitative limits, expressed as percentages of the association's "capital stock and surplus." The proposal noted that, with respect to the application of these quantitative limits to savings associations, the term "capital stock and surplus" refers in large measure to "tangible" capital. As noted above, a number of commenters argued that this position was contrary to current banking regulatory practices. The OTS recognizes that the FRB does not specifically exlude goodwill from the definition of "capital stock and surplus," but also notes that banks carry relatively little goodwill compared to thrifts. Accordingly, the OTS has concluded that it would be appropriate, and not inconsistent with safety and soundness considerations, for savings associations to include goodwill in their computations of "capital stock and surplus," but only to the extent that "supervisory goodwill" is includible in core capital through January 1, 1995, under the OTS's capital regulations.

D. Section 23A Calculations—Deduction of Loan Write-Offs and Write-Downs

The proposal included a provision at § 563.41(b)(8)(i)(B) that prohibited the deduction of write-offs or write-downs from a savings association's "aggregate amount of covered transactions." The OTS has determined that, while such a deduction generally may be appropriate, the question of deduction of losses may raise considerations unique to individual institutions that should be addressed on a case-by-case basis by Regional Directors. Accordingly, the final rule omits this provision.

E. Section 23A Exemptions

Section 23A(d) outlines a variety of exemptions from the restrictions and collateralization requirements imposed by section 23A (a) and (c). These transactions outlined in section 23A(d) are generally not, of course, exempt from low-quality asset restrictions and must be on terms consistent with safe and sound banking practices.

Three of these exemptions involve transactions between affiliated "banks." New section 11(a)(2)(B) of the HOLA denies the availability of the first such exemption, the "sister bank exemption," to most affiliated savings associations until January 1, 1995. The OTS has considered whether the other two exemptions, sections 23A (d)(2) and (d)(6), should be available to affiliated thrifts on the same terms that they are available to affiliated banks. Section 23A(d)(2) provides an exemption for making deposits in an affiliated "bank" in the ordinary course of business, subject to FRB (or OTS) restrictions.[18] Section 23A(d)(6) exempts the purchase of loans on a nonrecourse basis from affiliated "banks." [19]

The OTS has concluded that these exemptions should be available to affiliated savings associations, consistent with the mandate of section 11(a)(1) of the HOLA that, with certain exceptions, savings associations are to be regarded as member banks for purposes of section 23A and 23B. To the extent that a savings association is to be treated as a "member bank," it must, as a matter of logic, also be a "bank." [20] While the statute expressly withholds such "bank" status for purposes of the "sister bank" exemption and section 23B, it does not deny "bank" treatment to savings associations in other contexts. In view of the fact that the articulated congressional purpose for applying the FRA transactions-with-affiliates provisions to savings associations was to "establis[h] a uniform approach to regulating transactions with affiliates," [21] the OTS believes that, except where Congress has provided otherwise, savings associations should be treated as "banks" for all purposes under section 23A.[22] Accordingly, transactions of the kinds described in sections 23A(d)(2) and (d)(6) undertaken between affiliated savings associations will be eligible for the same exemptions from section 23A restrictions as they would if conducted by affiliated banks.[23]

F. Attribution of Activities and Transactions Among Affiliates.

Although not specifically discussed in the proposed regulation, the OTS believes that the issue of attribution of activities and transactions among affiliates needs to be clarified. The issue of attribution of transactions arises in the context of both the quantitative restrictions of section 23A and in connection with prohibitions contained in section 11(a)(1)(A) of the HOLA.

With regard to the quantitative limits, the OTS has considered whether, for purposes of calculating a savings association's "aggregate amount of covered transactions" with any single affiliate, the dollar amount of transactions between the savings association and subsidiaries of that affiliate should be imputed to the "parent" affiliate. The OTS has concluded that such attribution is appropriate and necessary to avoid circumvention of the 10 percent limit on transactions with a particular affiliate imposed by section 23A.

Many savings and loan holding company structures are complex and are composed of a number of companies that may have several tiers of subsidiaries. Section 23A'S quantitative limits are designed to curb not only transactions with affiliates as a group, but also large transactions with a single affiliate. Without an attribution rule, a savings association seeking to avoid the 10 percent limit could simply structure separate transactions with each of an affiliate and its controlled subsidiaries (up to the 20 percent aggregate limit), which transactions, because of the parent affiliate's control, would inure to the benefit of the parent affiliate.[24] Structured transactions of this nature would effectively concentrate the risks inherent in affiliated transactions[25] in a single affiliate, rather than spread the risks among various affiliates.

Accordingly, in computing the amount of transactions that are attributable to an affiliate, a savings association must include the amounts of all transactions it conducts with subsidiaries controlled, directly or indirectly, by such affiliate. This aggregation will not apply, however, to attribute to any controlling holding company of a savings association in the structure the transactions of all its subsidiaries. Nor will the amounts of transactions be imputed from a parent affiliate to subsidiaries of an affiliate. Thus, if a thrift engages in separate transactions

[18] 12 U.S.C. 371c(d)(2).

[19] 12 U.S.C. 371c(d)(6).

[20] Op. Chief Counsel (Nov. 1, 1990).

[21] H.R. Rep. No. 222 at 408.

[22] As in the case of the "sister bank" exemption, section 11 of the HOLA specifies that savings associations will not be treated as "banks" for purposes of section 23B until January 1, 1995.

[23] See supra note 20.

[24] Such a result is clearly disfavored by section 23A. See 12 U.S.C. 371c(a)(2).

[25] Some of these risks were described by the FRB staff in proposals, prepared at the request of congressional banking committees, that formed the basis for 1982 amendments to section 23A. Risks included transactions "designed either to rescue a financially troubled affiliate or to 'drain' a bank for the benefit of an affiliate." See letter from Paul A. Volcker to the Hon. Jake Garn (Oct. 2, 1981), Appendix B, "A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System" at 6.

with an affiliate and a subsidiary of that affiliate, the combined dollar amounts of those two transactions will be attributable to the parent affiliate, but only the dollar amount of the transaction with the affiliate's subsidiary will be attributed to the subsidiary for purposes of calculating the thrift's 10 percent limit with that affiliate.[26]

The question of attribution of activities also arises in connection with the application of section 11(a)(1)(A) of the HOLA, which prohibits loans and extensions of credit to "any affiliate unless that affiliate is engaged only in activities (permissible for bank holding companies)." For purposes of this provision, the OTS has considered whether the activities of subsidiaries of an affiliate should be attributed to that affiliate. In other words, the issue is whether a savings association would be barred from extending credit to an affiliate that directly engages only in activities permissible for bank holding companies but that owns subsidiaries engaged in activities not permissible for bank holding companies, such as real estate development. The OTS has determined that, in the case of affiliates that are not savings associations,[27] such activities will be imputed to each parent affiliate in a vertical ownership chain, up to but not including a controlling holding company in the corporate structure. However, as in the case of attribution of dollar amounts, discussed above, activities will not be attributed downward to subsidiaries of an affiliate.

G. Recordkeeping and Notice Provisions

The OTS has revised paragraph (e)(2)(ii) of the recordkeeping provisions found at § 563.41 slightly to broaden the circumstances under which the OTS may require prior notification by a savings association and its subsidiaries of transactions with the association's affiliates and subsidiaries. The revisions reflect additional conditions under which greater scrutiny of transactions with affiliates may be needed.

[26] It should be noted, however, that although attribution will not run down an affiliate-controlled chain, this "upward" attribution rule may still bar a thrift from engaging in covered transactions with an affiliate's subsidiary, even though the thrift has not reached its quantitative limit with respect to that particular affiliate's subsidiary. This is because the amount of additional covered transactions with that affiliate's subsidiary would be imputed up to its parent affiliate, causing the parent affiliate (though not its subsidiary) to be "overlimit." Accordingly, if a thrift has reached its quantitative transactional limit with respect to a particular affiliate, it will not be able to engage in new transactions with that affiliate or its subsidiaries until its reduces the overall amount of covered transactions with the entire affiliate chain.

[27] Op. Chief Counsel Nov. 13, 1990).

In addition, the OTS has revised the recordkeeping provisions to require that savings associations' records reflect that transactions subject to new § 563.42 comply with all requirements prescribed therein and that extensions of credit made by savings associations to affiliates are permissible under new section 11(a)(1)(A) of the HOLA. The OTS believes these additions are necessary for the same reasons discussed above in part II.C. regarding recordkeeping requirements imposed pursuant to new § 563.41.

H. Revision to OTS's Conflicts Rules

The OTS has revised paragraph (a) of § 563.43 of the Conflicts Rules to make clear that transactions subject to new § 563.41 are not subject to the restrictions outlined in § 563.43. OTS does not intend that savings associations be subject to prior approval requirements and other restrictions pursuant to newly-revised § 563.43 for transactions subject to the quantitative and qualitative limitations of § 563.41. Transactions subject to new § 563.42 that are not also subject to § 563.41, however, will continue to be subject to revised § 563.43 to the same extent that they were previously subject to § 563.41(b) prior to this final rule.

IV. Modifications to the Loans-to-One-Borrower Rule

A. Coverage

On July 10, 1990, the OTS issued a final loans-to-one-borrower (LTOB) rule.[28] The "Scope" section of that rule, § 563.93(a), provided that the LTOB limits would apply to all loans and extensions of credit made by savings associations and their operating subsidiaries, but that such limits did not apply to loans made by a savings association to its "operating subsidiaries," as defined in the LTOB rule, or to its subsidiaries or affiliates, as defined in OTS's transactions-with-affiliates rules.

The preamble to the final LTOB rule explained that it was not OTS's intention that both the LTOB and transactions-with-affiliates limitations apply to transactions between a savings association and a subsidiary under its control, and provided notice that revisions to the definitions of the terms "subsidiary" and "affiliate" in the final transactions-with-affiliates rule might necessitate revisions to the term "operating subsidiary" in the LTOB rule as well.[29] The OTS is now eliminating the "operating subsidiary" concept from the final transactions-with-affiliates rule and the LTOB rule and, accordingly, now revises the "Scope" section of the LTOB rule to preserve the complementary operation of the two rules. In addition, the OTS is removing the term "operating subsidiary" (and the associated control determinations) from the LTOB rule.

[28] 55 FR 28144 (July 10, 1990).

[29] See 55 FR at 28151.

As a result of this change, controlled subsidiaries of an association, as determined under new § 563.41, will essentially be treated as part of the association for LTOB purposes; that is, loans by these controlled subsidiaries to nonaffiliated borrowers will be aggregated with the loans of the parent thrift for purposes of LTOB limitations. The LTOB rule will not be applicable to loans from an association to its controlled subsidiaries or affiliates. On the other hand, loans to noncontrolled subsidiaries by the parent thrift and its controlled subsidiaries will be subject to LTOB limits directly and loans by these noncontrolled subsidiaries will not be aggregated with the loans of the parent thrift for LTOB purposes.

This revision applies to loans made by a savings association and its controlled subsidiaries that were made prior to the effective date of the revision, as well as to loans made after such date. OTS would not deem loans made by a savings association or its controlled subsidiaries before the effective date of this revision to be violations of LTOB limits, however, if such loans, when aggregated with other loans to the same borrower, exceed LTOB limits solely as a result of this revision. For purposes of computing the aggregate dollar amount of loans made to any one borrower, a savings association must now include the amount(s) of loans made by all its controlled subsidiaries to that borrower, and may not advance any new funds after the effective date to a borrower unless and until its existing loans (and those of its controlled subsidiaries) to that borrower are brought within the section 5200 lending limits, and then, only to the extent allowable under § 563.93.

As in the case of outstanding loans that had been subject to pre-FIRREA lending limits prior to enactment of FIRREA, a renewal of a loan made by a controlled subsidiary that was not an "operating subsidiary" under the July rule will generally not be viewed as the equivalent of a new loan at the time of renewal or extension for LTOB purposes, *Provided*: (1) No new funds are advanced by the association or its subsidiaries to the borrower; and (2) a new borrower is not substituted for the

original obligor.[30] Rather, prior to renewal or extension of such a loan, the association must make every effort to bring the loan into conformance with LTOB lending limits. If these efforts are unsuccessful, then the loan may be renewed or extended as a "nonconforming loan."

B. Other Technical Amendments

The OTS is today providing a technical revision to the § 563.93 lending limitations in an effort to prevent any potential confusion as to the appropriate use of the $500,000 exception to the general lending limitation set forth under § 563.93(d)(1). As the OTS clearly noted in issuing the final loans-to-one-borrower rule in July 1990,[31] the loans-to-one-borrower regulation was promulgated under section 5(u) of the HOLA, as amended by section 301 of FIRREA.[32] In addition to providing that section 5200 of the Revised Statutes (the national bank lending limitations [33] shall apply to savings associations in the same manner and to the same extent as it applies to national banks, FIRREA amended the HOLA to provide expressly that, notwithstanding the application of the section 5200 limitations, loans could be made for any purpose not to exceed $500,000 (the "$500,000 Special Rule").[34]

Today's technical amendment is intended to clarify that, as provided in the statute, the $500,000 Special Rule is intended as an alternate ceiling to the aggregate section 5200 limitations. Section 5200 provides both a 15 percent general limitation and a 10 percent limitation for loans secured by readily marketable collateral. Thus, as an alternate ceiling, the $500,000 Special Rule does not enable an association to make a $500,000 loan to a borrower and additional loans up to 10 percent of unimpaired capital and surplus if secured by readily marketable collateral. Just as the $500,000 Special Rule is not in addition to the 15 percent general limitation, the Special Rule is not, nor was it intended to be, in addition to the 10 percent limitation for loans secured by readily marketable collateral. Today's revision makes this statutory requirement clearer.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The collection of information contained in this final rule was previously approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). As described in the preamble and the rule, the collection of information in this final rule has been modified from that which appeared in the proposed rule. As so modified, the collection of information has been approved by OMB in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, under OMB control number 1550–0011.

The estimated average burden associated with the collection of information is 2 hours per respondent and 4 hours per recordkeeper. Comments concerning the accuracy of these estimates should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Surety bonds.

Accordingly, the OTS hereby amends parts 506 and 563, subchapters A and D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: Sec. 2(a), 94 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*). 5 CFR 1320.7.

2. Section 506.1 is amended by adding three new entries to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control no.
* * * *	*
563.41(e)	1550–0011
563.42(e)	1550–0011
* * * *	*
563.134	1550–0059
* * * *	*

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

§ 563.41 [Amended]

4. Section 563.41 is amended by redesignating paragraphs (b) and (c) as new paragraphs (e) and (f), respectively, of § 563.43 and § 563.41 is removed.

5. § 563.43 is amended by revising the section heading paragraph (a) to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

(a) *Scope of section.* Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468), and the Office's regulations thereunder, shall exclusively govern transactions between a savings association and such association's affiliates, as defined in section 11 of the HOLA. All other transactions between a savings association and its affiliated persons shall be subject to the provisions of this section.

* * * * *

6. New § 563.41 is added to read as follows:

[30] See 55 FR at 28157.

[31] See 55 FR at 28144.

[32] 12 U.S.C. 1464(u).

[33] 12 U.S.C. 84.

[34] See "Implementation of the Special Rules Provisions," 55 FR at 28152.

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

(a) *Restrictions on transactions with affiliates and subsidiaries.* A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if the transaction is permissible under section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and the additional restrictions set forth in this section, as follows:

(1) A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if:

(i) In the case of any affiliate, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 10 per centum of the capital stock and surplus of the savings association; and

(ii) In the case of all affiliates, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 20 per centum of the capital stock and surplus of the savings association;

(2) For purposes of paragraph (a)(1) of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate to the extent that proceeds of the transaction are used for the benefit of, or transferred to, that affiliate;

(3) No loan or extension of credit may be made by a savings association or its subsidiaries to any affiliate unless such affiliate is engaged solely in activities described in section 10(c)(2)(F)(i) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(2)(F)(i), as defined in 12 CFR 584.2–2;

(4) A savings association and its subsidiaries may not purchase or invest in the securities of any affiliate other than with respect to shares of a subsidiary which, for purposes of this paragraph (a)(4), shall include a bank and a savings association;

(5) A savings association and its subsidiaries may not purchase a low-quality asset from an affiliate unless the association or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate; and

(6) Any covered transactions and any transactions exempt under paragraph (d) of this section and section 23A(d) of the Federal Reserve Act, 12 U.S.C. 371c(d), between a savings association or its subsidiaries and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) *Definitions.* For the purpose of this section:

(1) The term *affiliate* with respect to a savings association means:

(i) Any company that controls the savings association and any other company that is controlled by the company that controls the savings association;

(ii) A bank or savings association subsidiary of the savings association;

(iii) Any company:

(A) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the savings association or any company that controls the savings association; or

(B) In which a majority of its directors, partners or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association;

(iv)(A) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the savings association or any subsidiary or affiliate of the savings association; or

(B) Any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(2); and

(v) Any company:

(A) That the Office or the Board of Governors of the Federal Reserve System determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate of the savings association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the savings association or its subsidiary; or

(B) That the Office determines presents a risk to the safety or soundness of the savings association, based on the nature of the activities conducted by the company, amount of transactions with the savings associations or its subsidiaries, financial condition of the compnay or its parent savings association, or other supervisory factors;

(2) The following shall not be considered to be an affiliate:

(i) Any company, other than a bank or savings association, that is a subsidiary of a savings association, unless a determination is made by the Board of Governors of the Federal Reserve System under section 23A(b)(1)(E) of the Federal Reserve Act, 12 U.S.C. 371c(b)(1)(E), or by the Office under § 563.41(b)(1)(v), not to exclude the subsidiary company from the definition of affiliate and, provided that any company that would be an affiliate under paragraph (b)(1) of this section but for the fact that it is a subsidiary of a savings association, shall nonetheless be deemed to be an affiliate unless the Office determines to exclude such company from the definition of affiliate;

(ii) Any company engaged solely in holding the premises of the savings association;

(iii) Any company engaged solely in conducting a safe deposit business;

(iv) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(v) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of a law or regulation, for a period of two years from the date of the exercise of those rights, subject, upon application, to authorization by the Office for good cause shown of extensions of time for not more than one year at a time, but extensions in the aggregate shall not exceed three years;

(3)(i) A company or shareholder shall be deemed to have control over another company if:

(A) The company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The company or shareholder would be deemed to control the company under § 574.4(a) of this chapter, or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (b)(1)(iii) of this section;

(4) The term *subsidiary,* with respect to a specified savings association, means a "subsidiary," as that term is defined at § 567.1(dd) of this subchapter, that is controlled, directly or indirectly, by the savings association;

(5) The term *savings association* has the same meaning as that term is defined at § 583.21 of this chapter; and the term *bank* includes a state bank,

national bank, banking association, or trust company;

(6) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "savings association" and a "bank";

(7) The term *covered transaction* means with respect to an affiliate of a savings association:

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except purchases of real and personal property that may be specifically exempted by the Board of Governors of the Federal Reserve System by order or regulation;

(iii) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(iv) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(8) The term *aggregate amount of covered transactions* means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions. For this purpose, the outstanding balance of any credits extended to an affiliate shall be added to the value of any asset acquired from the affiliate (or all affiliates), as reflected on the financial records of the savings association or its subsidiaries, subject to the following conditions:

(i) With respect to a loan or extension of credit made by the savings association or its subsidiaries, any principal amount that has been amortized may be deducted from the *aggregate amount of covered transactions;*

(ii) With respect to a purchase of assets by the savings association or its subsidiaries:

(A) Any amounts of depreciation that have been deducted from the cost of an asset for federal income tax purposes by the purchaser may be deducted from the *aggregate amount of covered transactions;* and

(B) Upon the sale of an asset that was previously purchased in a covered transaction, the *aggregate amount of covered transactions* shall be reduced by an amount equal to the purchase price of the asset at the time of the covered transaction less depreciation subsequently taken and previously deducted from the *aggregate amount of covered transactions;*

(9) The term *securities* means stocks, bonds, debentures, notes, and other similar obligations;

(10) The term *low-quality asset* means an asset that falls in any one or more of the following categories:

(i) An asset classified as *substandard, doubtful,* or *loss* or treated as *other loans especially mentioned* in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(ii) An asset in a nonaccrual status;

(iii) An asset on which principal or interest payments are more than thirty days past due; or

(iv) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(c) *Collateral for certain transactions with affiliates.* (1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a savings association or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:

(i) 100 per centum of the amount of the loan or extension or credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Home Loan Bank or Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the savings associations;

(ii) 110 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(iii) 120 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(iv) 130 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the savings association shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the savings association.

(5) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) *Exemptions.* The provisions of this section, except paragraph (a)(6) of this section, shall not be applicable to the following transactions by a savings association:

(1) Any transaction, subject to the prohibition contained in paragraph (a)(5) of this section, with another savings association or bank that is at least 80 percent owned by the same bank and savings association holding company that owns the savings association, if every savings association and every bank owned by the holding company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill; and

(2) After January 1, 1995, any transaction, subject to the prohibition contained in paragraph (a)(5) of this section with a savings association or a bank:

(i) That controls 80 per centum or more of the voting shares of the savings association;

(ii) In which the savings association controls 80 per centum or more of the voting shares; or

(iii) In which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the savings association;

(3) Making deposits in an affiliated bank, affiliated savings association or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Office or the Board of Governors of the Federal Reserve System may prescribe by regulation or order;

(4) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(5) Subject to paragraph (A)(3) of this section, making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate, if such loan, extension of credit, guarantee, acceptance, or letter of credit is fully secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the savings association;

(6) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in paragraph (a)(5) of this section, purchasing loans on a nonrecourse basis from affiliated banks or savings associations; and

(7) Purchasing from an affiliate a loan or extension of credit that was originated by the savings association and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) *Recordkeeping and notice requirements.* (1) With respect to all transactions between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records that reflect those transactions in reasonable detail. The association's records shall, at a minimum:

(i) Identify the affiliate;

(ii) Indicate the dollar amount of the transaction and reflect that the amount is within the applicable quantitative limitations specified in this section or that the transaction is not subject to those limitations;

(iii) Indicate whether the transaction involves a low-quality asset as that term is defined in paragraph (b)(10) of this section;

(iv) Indicate the type and amount of any collateral involved in the transaction and that such collateral complies in all respects with the requirements of this section or that the transaction is not subject to those limitations;

(v) With respect to any transaction subject to § 563.42 of this part, demonstrate that the terms and circumstances of the transaction comply with the standards set forth therein;

(vi) Reflect that loans and extensions of credit made to affiliates comply with paragraph (a)(3) of this section; and

(vii) Be readily accessible for examination and other supervisory purposes.

(2) Notwithstanding paragraphs (a) through (d) of this section, and except with respect to transactions of the type described in 12 CFR 250.250, the Office may require prior notification by a savings association and its subsidiaries of any and all transactions with any or all of the association's affiliates or subsidiaries under the following circumstances:

(i) A de novo savings association that commenced operations or an association or holding company thereof that has been the subject of an application or notice under part 574 of this chapter that was approved during the preceding two year period; and

(ii) A savings association that:

(A) Has a composite rating of 4 or 5 under the MACRO Rating System;

(B) Is not meeting all of its current regulatory capital requirements;

(C) Has entered into a consent to merge, a supervisory agreement or cease and desist order during the preceding two year period, or is subject to a formal enforcement proceeding; or

(D) That the Office determines is otherwise the subject of generalized or specific supervisory concern or that requires more than normal supervision because of its financial condition, past practices or other factors, and the Office specifies the basis or bases for this concern in the written notice sent to the institution.

(iii) Upon receipt of written notice from the Office identifying one or more of the circumstances described in paragraph (e)(2)(ii) of this section and stating that the Office has determined that prior notification by a savings association will be required pursuant to this paragraph, the association shall provide, no later than 30 days prior to entering into any transaction for which prior notification has been required, written notice containing a full description of the proposed transaction. If no objections are raised by the Office during such 30 day period, the association or its subsidiaries may proceed with the proposed transaction.

7. Section 563.42 is added to read as follows:

§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.

(a) *General.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if the transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1, and the additional restrictions set forth in this section, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association or its subsidiary, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies;

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate;

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person;

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in the transaction or series of transactions;

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions.*—(1) *General.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless the purchase is permitted:

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of securities has been approved, before the securities are

initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section:

(1) The terms *affiliate, bank, covered transaction, savings association* and *subsidiary* have the meaning given to each term in § 563.41 of this part, (but the term *affiliate* does not include any company described in paragraph (b)(2) of § 563.41, any bank, any savings association in a structure qualifying under § 563.41(d)(1) of this part or, after January 1, 1995, any savings association).

(2) The term *security* has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10); and

(3) The term *principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(e) *Recordkeeping requirements.* With respect to all transactions subject to this section between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records, that reflect those transactions in reasonable detail. The association's records shall, at a minimum, include the information required by § 563.41(e)(1)(v) of this part.

8. Section 563.93 is amended by revising paragraphs (a) and (d)(1) to read as set forth below; by removing paragraphs (b)(3) and (b)(7); by redesignating paragraphs (b)(4), (b)(5), (b)(6), and (b)(8) through (b)(13) as paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) through (b)(11), respectively; and by amending paragraph (f)(2) by removing the words "operating subsidiary" wherever they appear and by inserting in lieu thereof, the word "subsidiary," respectively:

§ 563.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association to its subsidiaries or to its affiliates. The terms *subsidiary* and *affiliate* have the same meanings as those terms are defined in § 563.41 of this part.

* * * * *

(d) *Exceptions to the general limitation*—(1) *$500,000 exception.* If a savings association's aggregate lending limitation calculated under paragraphs (c)(1) and (c)(2) of this section is less than $500,000, notwithstanding this aggregate limitation in paragraphs (c)(1) and (c)(2) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

* * * * *

Dated: March 11, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-17472 Filed 7-24-91; 8:45 am]

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RESOLUTION TRUST CORPORATION

12 CFR Part 1680

RIN 3205-AA10

Office of the Inspector General; Disclosure of Information Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Inspector General ("OIG") of the Resolution Trust Corporation ("RTC") is adopting an interim rule for the processing of requests to the OIG for information pursuant to the Freedom of Information Act. The interim rule would also implement the Freedom of Information Reform Act of 1986 which requires agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act.

DATES: This interim rule is effective July 25, 1991. Comments must be received by September 23, 1991.

ADDRESSES: Comments must be sent to: John J. Adair, Inspector General, Resolution Trust Corporation, Office of Inspector General, 801 17th Street NW.—room 726, Washington, DC 20434-0001.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Counsel to the Inspector General, (202) 416-4312 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Background

On March 26, 1991 the Board of Directors of the Resolution Trust Corporation adopted a Resolution authorizing the Inspector General to promulgate policies and regulations necessary to release information pursuant to the Freedom of Information Act. This rule sets forth the procedures to be used in requesting information from the RTC OIG, the fees to be charged requestors, and the procedures for requesting waiver of fees under the Freedom of Information Act.

B. Requests for Information

The rule provides that all requests for OIG records should be sent to the OIG in Washington. The request must reasonably describe the desired record. The rule also publishes the addresses of RTC public information centers where many documents may be directly obtained by the public.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General the authority to make initial determinations concerning requests for release of information. In addition, Regional Inspectors General for Audit may release completed audit reports issued by that region. Final decisions on appeal will be made by the Inspector General or Deputy Inspector General.

D. Exemption from Disclosure

The rule recites the statutory bases for exemption from disclosure and provides that any reasonably segregable portion of a record shall be produced, as provided by the Freedom of Information Act.

E. Fees and Fee Waivers

The rule conforms with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012). Because the rule follows these guidelines, the fee schedule differs from that presently being used by the

remainder of RTC, which is following regulations promulgated by the Federal Deposit Insurance Corporation prior to the date of the guidelines. However, the rule does reflect the fee schedule which the RTC is expected to adopt when it issues its regulations in the near future. Copies will be provided at $.20 per page, and requestors will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time for searches. Computer time will be charged at the actual direct cost of providing the service.

The rule also sets forth factors to be considered in determining whether to waive or reduce fees. Requests for waivers or reduction must be in writing and address the six factors.

Request for Public Comment

The RTC OIG is seeking comments on all aspects of the interim rule. Comments will be carefully reviewed for purposes of developing final regulations.

Administrative Procedure Act

The RTC OIG is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

All RTC Freedom of Information Act requests are presently addressed by the Office of the Executive Secretary. However, in order to ensure that the confidentiality of any informant is protected, that sensitive information relating to ongoing audits and investigations is protected from premature disclosure, and that the appearance of a lack of independence on the part of the OIG is prevented, the OIG must have the authority to control release of its files. The high level of public scrutiny of the work of the RTC lends particular emphasis to the need to ensure that any employee or member of the public who desires the confidentiality provided for under the Inspector General Act (5 U.S.C. app.) will in fact be protected to the full extent of that law. While the current system has not resulted in any disclosure of the identity of such a person, or any other inappropriate disclosure of information outside of the OIG, there is a need to remove even the perception that such a disclosure could happen. Therefore, this rule, which would remove management of RTC from the process of releasing OIG records, must be effective immediately.

In addition, the substance of much of the rule, including those portions concerning method and timing of release of records, exemption from release of records, and fees to be charged requestors are largely dictated by statute or by OMB regulations promulgated pursuant to statute and already subject to public comment. In the case of these portions of the rule, the need for public comment is reduced since the OIG has little discretion in adopting these provisions.

Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 1680

Freedom of information, Production and disclosure of information.

For the reasons set out in the preamble, the RTC–OIG adds part 1680 to title 12, chapter XVI of the Code of Federal Regulations as follows:

PART 1680—OFFICE OF THE INSPECTOR GENERAL; DISCLOSURE OF INFORMATION

Sec.

Authority: 5 U.S.C. 552; 5 U.S.C. App.; 12 U.S.C. 1441a(b).

§ 1680.1 Purpose and scope.

(a) This part contains the regulations of the Office of the Inspector General of the Resolution Trust Corporation ("RTC") which implement the Freedom of Information Act, as amended (5 U.S.C. 522). This part also informs the public how to request records and information from the Office of the Inspector General and explains the appeal procedure that may be used if a request is denied.

(b) Regulations governing disclosure of information by all offices within the RTC other than the Office of the Inspector General are published in part 309 of this title.

§ 1680.2 Definitions.

(a) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation (RTC).

(b) *Office of the Inspector General* means Office of the Inspector General of the RTC.

(c) *Person* includes corporations and organizations as well as individuals.

(d) *Record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof.

(e) *Request* means a written request for records made pursuant to the Freedom of Information Act and this part.

(f) *RTC* means Resolution Trust Corporation.

§ 1680.3 Requests for records.

(a) A request for Office of Inspector General records must be made in writing. The request should be addressed to: Office of the Inspector General, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001.

(b) Each request must reasonably describe the desired record including the name, subject matter, and file number or date, where possible, so that the record may be identified and located. The request should include the name, address and telephone number of the requester. In order to enable the Office of the Inspector General to comply with the time limitations set forth in § 1680.13, both the envelope containing a written request and the letter itself should clearly indicate that the letter is a Freedom of Information Act request.

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in §§ 1680.8 and 1680.9. At its discretion, the Office of the Inspector General may require advance payment in accordance with § 1680.12.

(d) Copies of available records will be produced as promptly as possible. Copying service will be limited to not more than one copy of any single page.

Records which are published, available at the public information centers noted in § 1680.5, or otherwise available for sale, will not be reproduced.

§ 1680.4 Initial response.

The initial response to approve or deny a request will be made by one of the following individuals: Assistant Inspector General for Audit; Assistant Inspector General for Investigation; Assistant Inspector General for Quality Assurance and Oversight; Assistant Inspector General for Policy, Planning and Resources; or their designees. In addition, for completed audit reports issued by Regional Inspector General offices, the issuing Regional Inspector General for Audit ("RIGA") may release the completed report.

§ 1680.5 Obtaining publicly available information.

A listing of certain **Federal Register** publications and publicly available information is set forth in 12 CFR part 309. In addition to the information centers listed there, the Resolution Trust Corporation maintains the following information centers:

Headquarters, 801 17th Street NW., Washington, DC 20434–0001.
Southwest Region, 3500 Maple Avenue, Dallas, Texas 75219.
North Central Region, 7400 West 110th Street, Overland Park, Kansas 66210–2346.
Eastern Region, 245 Peachtree Center Avenue NE., Atlanta, Georgia 30303.
Western Region, 1225 17th Street—suite 3200, Denver, Colorado 80202.

§ 1680.6 Exemptions from disclosure.

The Office of the Inspector General will produce reasonably described records for which it receives a request under § 1680.3, except for those records exempt from production under section 552(b) of the Freedom of Information Act. The classes of records falling within the exemptions are those pertaining to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the RTC;

(c) Specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the RTC;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the RTC or any agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

§ 1680.7 Records produced upon request when reasonably described.

(a) When a request is made which reasonably describes a record of the Office of the Inspector General which has been stored in the National Archives or other record center of the General Services Administration, the record will be requested by the Office of the Inspector General if it otherwise would be available under this part.

(b) Reasonable effort will be made to make a record in use by the staff of the Office of the Inspector General available when requested if it otherwise would be available under this part, but availability will be deferred to the extent necessary to avoid significant interference with the business of the Office of the Inspector General.

§ 1680.8 Fees.

(a) *Copies of records.* Requestors will be charged $0.20 per page for copies of documents up to 11"×14". For copies prepared by computer, such as tapes or printouts, requestors will be charged the actual cost, including operator time, of production of the copy. For other methods of reproduction or duplication, the requestor will be charged the actual direct cost of producing the document(s).

(b) *Manual searches for records.* Wherever feasible, the requestor will be charged at the salary rate(s) (i.e. basic rate of pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g. all administrative/clerical, or all professional/executive), the requestor will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than full hour will be billed by five-minute segments.

(c) *Computer searches for records.* The requestor will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* The Office of the Inspector General may contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the Office of the Inspector General will ensure that the ultimate cost to the requester is no greater than it would be if the Office of the Inspector General itself had performed these tasks. In no case will there be contracted out responsibilities which the FOIA provides that an Agency alone may discharge, such as determining the applicability of an exemption, or determine whether to waive or reduce fees.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, the first 100 pages of duplication and the first two hours of search time will be provided without charge. For non-commercial use requesters, the Office of the Inspector General will not begin to assess fees until after the free search and reproduction have been provided. No charge will be assessed non-commercial use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. "Search time" in this context is based on manual search. To apply this term to searches made by computer, the Office of the Inspector General will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e. the operator, the Office of the Inspector General will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this Part shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States.

(g) *Definitions.* As used in this part:

(1) *Direct costs* means those expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1680.9 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories.

(a) *Commercial use requesters.* (1) The Office of the Inspector General will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating records sought for commercial use. Commercial use requesters are not entitled to free search time or free pages of reproduction of documents.

(2) *Commercial use* refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Office of the Inspector General must determine the use to which a requester will put the documents requested. Moreover, where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Office of the Inspector General will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) The Office of the Inspector General will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(2) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(3) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 1680.9(a) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) The Office of the Inspector General will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges of the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(2) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Office of the Inspector General may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* The Office of the Inspector General will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from individuals for records about themselves filed in Office of Inspector General systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

§ 1680.10 Review of records, charges for unsuccessful searches, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Office of the Inspector General analyzes the applicability of a specific exemption to a particular record or portion of a record. The Office of the Inspector General will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 1680.8.

(b) *Charges for unsuccessful searches.* Generally no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified or the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Office of the Inspector General reasonably believes that a requester or group of requesters acting in concert is attempting to evade the assessment of fees, it may aggregate any such requests and charge accordingly.

(d) *Waiving or reducing fees.* The Office of the Inspector General shall furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested in writing. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 1680.17 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. Each request for a waiver or reduction in fees must provide information addressing the six factors. The factors are as follows:

(1) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1680.11 Charges for interest; utilization of Debt Collection Act.

(a) *Charging interest.* The Office of the Inspector General will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee payment received by the Office of the Inspector General, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(b) *Use of the Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may, under the authority of the Debt Collection Act, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed.

§ 1680.12 Advance payments.

(a) The Office of the Inspector General may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Office of the Inspector General estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In that event, the Office of the Inspector General will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of a requester with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may require the requester to pay the full amount owed or demonstrate that the fees have in fact, been paid, and to make an advance payment of the full amount of the estimated fee before the Office of the Inspector General begins to process a new request or a pending request from that requester.

(b) When the Office of the Inspector General acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6), (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the fee payments described above have been received.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay such anticipated fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

§ 1680.13 Time limitations.

(a) Upon receipt of a request for records, the Assistant Inspector General for RIGA listed in § 1680.4, as appropriate, will determine within ten working days whether to grant the request. The appropriate Assistant Inspector General or RIGA will notify the requester immediately in writing of the determination, and, if the

determination is to deny all or a portion of the request, the reasons for the determination and the right of the person to appeal an adverse determination to the Inspector General of the RTC.

(b) The time of receipt for processing a request is the time it is received by the appropriate office for review. If a request is misdirected by the requester, the Office of the Inspector General or RTC official who receives the request will promptly refer it to the appropriate office. The time allowed for response will not begin to run until receipt by the appropriate office.

(c) A determination with respect to an appeal of an initial denial to the Inspector General under § 1680.17 will be made within 20 working days after receipt and will be communicated immediately to the person requesting review.

(d) If the Office of Inspector General grants the request for records, the records will be made available promptly to the requester.

(e) In unusual circumstances as specified in this paragraph, the time limits prescribed in this section may be extended. Any extension will be in writing to the requester and will include reasons for the extension and the date on which the disposition of the request will be sent. No extension will be for more than ten working days. As used in this paragraph, "unusual circumstances" means (but only to the extent necessary for the proper processing of the particular request) that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another office having a substantial interest in the determination of the request or among two or more offices of the Office of the Inspector General having a substantial interest in the subject matter of the request.

(f) Review of requests may be discontinued until:

(1) Appropriate advance payment is received;

(2) Agreement to bear estimated costs is received; or

(3) A determination is made on a request for waiver or reduction of fees.

§ 1680.14 Authority to release records or copies.

Any Assistant Inspector General listed in § 1680.4, or designee, is authorized to release any record (or copy) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. Any RIGA listed in § 1680.4 may release completed audit reports issued by that RIGA. Records for which another officer has primary responsibility may not be released by an authorized person without the consent of the officer or his or her designee.

§ 1680.15 Authority to deny requests for records and form of denial.

The Assistant Inspectors General described in § 1680.4, or designee, may deny a request for a record. Any denial will:

(a) Be in writing;

(b) State simply the reasons for the denial;

(c) State that the denial may be appealed to the Inspector General;

(d) Set forth the steps for appealing consistent with § 1680.17; and

(e) Be signed by the Assistant Inspector General responsible for the denial.

§ 1680.16 Effect of denial of request.

Denial of a request shall terminate the authority of the Assistant Inspector General to released or disclose the requested record, which thereafter may not be made available except with express authorization of the Inspector General.

§ 1680.17 Appeals from denials of initial requests.

(a) A person whose initial request for records under this Part has been denied, either in part or in whole, has the right to appeal the denial to the Inspector General within 30 business days of the issuance of the written denial.

(b) Appeals of initial denials must be in writing, addressed to the Office of the Inspector General, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001, and shall contain the following:

(1) A copy of the initial request;

(2) A copy of the written denial issued under § 1680.15; and

(3) A statement of the circumstances, reasons, additional relevant information or arguments advanced in support of disclosure of the documents requested.

(c) The Inspector General will issue a written determination within 20 business days after receipt of the appeal by the Office of the Inspector General unless extended pursuant to § 1680.13(e). This determination will constitute final agency action. The Inspector General will obtain the concurrence of the Counsel to the Inspector General with respect to determinations concerning information, records, or other documents developed or originated by the Office of the Inspector General. The Inspector General will obtain the concurrence of the RTC Special Council with respect to determinations concerning other records.

(d) The time of receipt for processing of an appeal is the time it is received by the Inspector General of the RTC. If the appeal is misdirected by the requester and is received by one other than the Inspector General, the RTC official who receives the appeal will forward it promptly to the Inspector General at the time of receipt. The time allowed for response will not begin to run until receipt by the Inspector General.

(e) Where the determination is to deny the appeal, in whole or in part, the determination shall cite the exemption relied upon to support the denial and shall inform the appealing requestor of the right to judicial review of the denial under the Freedom of Information Act (5 U.S.C. 552).

Dated at Washington, DC, this 19th day of July, 1991.

Office of the Inspector General.

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 91-17697 Filed 7-24-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-46-AD; Amendment 39-7077; AD 91-15-13]

Airworthiness Directives; Boeing Model 767 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires modification of the inboard edges of the rub strip on the inboard spoilers. This amendment is prompted by reports of overwing escape slides damaged by contacting sharp corners on the inboard spoilers. This condition, if not corrected, could render the overwing escape slides

unusable in the event of an emergency evacuation.

DATES: Effective August 29, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 277-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires modification of the inboard edges of the rub strip on the inboard spoilers, was published in the **Federal Register** on March 22, 1991 (56 FR 12130).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters expressed objection to the modification being mandated by an airworthiness directive (AD). The commenters based their objections on several reasons: First, in all three occurrences of reported damage, the slides were judged by Boeing to be usable for evacuation, since a slide is usable even with one of its two chambers deflated; this contradicts the FAA's conclusion, as stated in the preamble to the notice, that the subject slides would be rendered unusable should the slides be damaged through contact with the inboard spoilers. Second, these commenters pointed out that there have been no reports of failures of the slides occurring on in-service airplanes. Third, Boeing did not issue the related service bulletin as an "alert" service bulletin, thus suggesting that the problem was not of such a critical nature that would warrant the issuance of an AD.

The FAA does not concur with the commenters' objections. The overwing slide is a twin tube design and loss of one tube will not affect the airholding ability of the other tube. During the development of the overwing slide, the slide manufacturer demonstrated that one person per lane could safely traverse the slide with one tube deflated; however, the slide was not demonstrated to meet the evacuation rate required to evacuate the airplane. This is considered by the FAA to be an unsafe condition. There have been three occurrences (on two airplanes) of the slide being damaged by sharp corners on the inboard spoilers, and the FAA has determined this condition is likely to occur on airplanes that were delivered prior to the elimination of the sharp edges during production at Boeing. Finally, regardless of the status assigned to a service bulletin by the manufacturer (whether "alert" or otherwise), the FAA reviews all service bulletins to determine if an unsafe condition exists and if the condition is likely to occur in other airplanes in the fleet. In this case, the FAA has determined that an unsafe condition exists and that the condition is likely to exist on other airplanes of the same type design.

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 767-27-0104, Revision 1, dated May 30, 1991. This issue revises the "Background" and "Reason" paragraphs, makes reference to the Notice, and updates the effectivity to reflect the changes in airplane operators, but does not change the number of airplanes affected. The final rule has been revised to allow operators to use either the original issue or Revision 1 of the service bulletin as the appropriate service information source.

After careful reivew of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 298 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-15-13. Boeing: Amendment 39-7077. Docket No. 91-NM-46-AD.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767-27-0104, dated November 15, 1990, certificated in any category.

Compliance: Required within the next 9 months after the effective date of this AD, unless previously accomplished.

To prevent the overwing escape slides from being damaged by sharp corners on the inboard edges of the rub strip on the inboard spoilers, accomplish the following:

A. Modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767-27-0104, dated November 15, 1990, or Revision 1, dated May 30, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The modification shall be done in accordance with Boeing Service Bulletin 767-27-0104, dated November 15, 1990, or Revision 1, dated May 30, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7077, AD 91-15-13) becomes effective August 29, 1991.

Issued in Renton, Washington, on July 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-17652 Filed 7-24-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 774

[Docket No. 910762-1162]

Establishment of General License SAFEGUARDS

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) by establishing a new General License designated SAFEGUARDS. General License SAFEGUARDS authorizes exports of commodities to the International Atomic Energy Agency (IAEA) or the European Atomic Energy Commission (Euratom), for international safeguards use. This rule also allows permissive reexports of commodities by IAEA or Euratom for international safeguards use, provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and recovers the commodities when they become obsolete, are no longer required, or are replaced by other eligible commodities.

DATES: This rule is effective July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Background Information

The International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom) are international agencies that establish and administer safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

Rulemaking Requirements and Invitation to Comment

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citations for parts 771 and 774 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et. seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1991 (55 FR 48587, November 20, 1990).

PART 771—AMENDED

2. A new § 771.26 is added to read as follows:

§ 771.26 General license SAFEGUARDS; international safeguards.

(a) *Scope.* A general license designated SAFEGUARDS is established subject to the provisions of § 771.26, authorizing exports to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom) as follows:

(1) Commodities consigned to the International Atomic Energy Agency (IAEA) at its headquarters in Vienna, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

(2) Commodities consigned to the European Atomic Energy Community (Euratom) Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg, Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

(3) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided

that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1) and (a)(2) of this section when they become obsolete, are no longer required, or are replaced.

(4) Commodity shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(5) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited nuclear activities described in § 771.2(c)(7).

(6) When commodities originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the Export Administration Regulations (15 CFR parts 730 through 799).

(b) *Exclusions.* No supercomputers may be exported under this general license.

PART 774—AMENDED

3. Section 774.2 is amended by adding a new paragraph (l) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(l) Reexports of eligible commodities made by the International Atomic Energy Agency (IAEA) or the European Atomic Energy Commission (Euratom) for official international safeguard use, subject to the provisions of § 771.26 of this subchapter.

Dated: July 19, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-17585 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-DT-M

[2] See § 774.9 for effect on foreign laws.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-16]

Special Local Regulations; Hammond Offshore Classic, Southern Lake Michigan, Calumet and Indiana Harbors, Hammond, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Hammond Offshore Classic. This event will be held in the Calumet and Indiana Harbors, Hammond, IN, on the 10th of August 1991, from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.). These regulations are needed to provide for the safety of life and property on navigable waters during this event.

EFFECTIVE DATE: These regulations will become effective from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 10th of August 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060 (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 21 June 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Hammond Offshore Classic will be conducted in the Calumet and Indiana Harbors on the 10th of August 1991, with an alternate date of 11 August 1991 if the weather is inclement on the 10th of August 1991. This event will have an estimated forty to fifty, 24 to 40 foot, offshore power boats racing in a closed course that will draw an unusually large number of spectator craft in the area, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with the prior approval of the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Calumet Harbor, IL.).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0916 to read as follows:

§ 100.35—T0916 Hammond Offshore Classic, Southern Lake Michigan, Calumet and Indiana Harbors, Hammond, IN.

(a) *Regulated Area.* That portion of the Calument and Indiana Harbors enclosed by a line running from shore at position 41 degrees 43 minutes 30 seconds North, 087 degrees 31 minutes 24 seçonds West, then eastward to the Harbor Breakwater South End Light (LLNR 18785), thence northward to position 41 degrees 45 minutes North, 087 degrees 28 minutes 54 seconds West, then due east to position 41 degrees 45 minutes North, 087 degrees 24 minutes 24 seconds West, thence due south to position 41 degrees 41 minutes North, 087 degrees 24 minutes 24 seconds West, then westward to position 41 degrees 41 minutes 12 seconds North, 087 degrees 26 minutes 45 seconds West, thence to

shore at position 41 degrees 42 minutes North, 087 degrees 30 minutes 15 seconds West, then in a northwest direction along the shoreline to origin at position 41 degrees 43 minutes 30 seconds North, 087 degrees 31 minutes 24 seconds West.

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage in the above area from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 10th of August 1991. All vessels except authorized participants in the event are prohibited in this area during the regulated time, except when expressly authorized by the Coast Guard Patrol Commander. When determined appropriate by the Coast Guard Patrol Commander, racing shall be suspended to provide for the passage of all commercial vessels of over 1,000 gross tons. When determined appropriate by the Coast Guard Patrol Commander, commercial vessel traffic of 1,000 gross tons or less and recreational vessels will periodically be permitted to transit through the regulated area in between race heats and during breaks, as activity permits. Commercial vessel traffic of 1,000 gross tons or less will receive priority passage. (2) If the weather on the 10th of August 1991 is inclement, the powerboat race and the period for the applicability of the regulated area will be postponed until 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 11th of August 1991. If postponed, notice will be given on the 10th of August 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel approval of the Patrol Commander and when so directed by that officer. All vessels transiting the area with the approval of the Coast Guard Patrol Commander, will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the achoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 15, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-17603 Filed 7-25-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7518]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazzard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impractical and unnecesary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since

these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I—Regular Conversions				
Massachusetts:				
Becket, town of, Berkshire County	250018	Mar. 8, 1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Aug. 5, 1991.
Savoy, town of, Berkshire County	250040	Feb. 21, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Sandwich, town of, Barnstable County	250012	Dec. 29, 1972, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Maine:				
Berwick, town of, York County	230144	July 26, 1988, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Glenburn, town of, Penobscot County	230106	July 15, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Livermore Falls, town of, Androscoggin County.	230006	Apr. 23, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Machiasport, town of, Washington County	230141	May 7, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Vermont: Bethel, town of, Windsor County	200143	Nov. 1, 1974, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region II				
New Jersey: Dover, township of, Ocean County	345293	Oct. 23, 1970, Emerg; Mar. 24, 1972, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
New York:				
Harrison, town of, Westchester County	360912	Feb. 2, 1973, Emerg; Mar. 15, 1982, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Southport, town of, Chemung County	360156	Mar. 2, 1973, Emerg; May 1, 1980, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region III				
Pennsylvania:				
Scrubgrass, township of, Venango County	422542	Feb. 24, 1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Shinglehouse, borough of Potter County	420764	Dec. 16, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region VI				
Arkansas: Pulaski County, unincorporated areas	050179	Mar. 6, 1979, Emerg; July 16, 1981, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region V—Regular Conversions				
Ohio:				
Delphos, city of, Allen County	390005	July 25, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Aug. 19, 1991.
Monroe, village of, Butler County	390042	Aug. 18, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Pickerington village of, Fairfield County	390162	July 11, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Salineville, village of, Columbiana County	390628	Mar. 21, 1978, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Wisconsin:				
Oneida County, unincorporated areas	550579	June 10, 1979, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Rhinelander, town of, Oneida County	550301	Mar. 25, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Sturgeon Bay, city of, Door County	550111	May 13, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VII				
Kansas:				
Cherokee County, unincorporated areas	200044	May 10, 1985, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Cowley County, unincorporated areas	200563	Feb 26, 1979, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Region I				
Maine:				
Houlton, town of, Aroostook County	230021	Aug. 2, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Granville, town of, Addison County	500003	Aug. 29, 1986, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Hancock, town of, Addison County	500005	Oct. 17, 1975, Emerg; Sept. 27, 1985, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Region II				
New York:				
Freedom, town of, Cattaraugus County	360074	Aug. 22, 1975, Emerg; May 25, 1984, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Mamakating, town of, Sullivan County	360826	Oct. 6, 1976, Emerg; Sept. 24, 1984, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Pennsylvania:				
Armash, township of, Mifflin County	421879	Feb. 6, 1976, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Austin, borough of, Potter County	420760	July 9, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Region III				
Pennsylvania:				
Brown, township of, Mifflin County	420683	Aug. 16, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Hawley, borough of, Wayne County	420863	July 18, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Jackson, township of, Venango County	422535	Mar. 8, 1977, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Osceola, township of, Tioga County	421182	Mar. 18, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Pike, township of, Potter County	421983	July 11, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Roulette, township of, Potter County	421986	Sept. 1, 1976, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sadsbury, township of, Crawford County	422396	Aug. 6, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sharon, township of, Potter County	421987	Oct. 6, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Shippingport, borough of, Beaver County	420117	Mar. 8, 1977, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sterling, township of, Wayne County	422175	May 13, 1975, Emerg; Dec. 3, 1982, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sweden, township of, Potter County	421989,	Oct. 9, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Valley, township of, Montour County	421924	Aug. 21, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Virginia:				
Isle of Wight County, unincorporated areas	510303	May 20, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Page County, unincorporated areas	510109	Oct. 18, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Region IV				
Alabama: Guntersville, city of, Marshall County	010311	May 5, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Region V				
Wisconsin:				
Arcadia, city of, Trempealeau County	550439	Sept. 30, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Bloomer, city of, Chippewa County	550042	Mar. 20 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Aug. 19, 1991.
Illinois:				
Pontoon Beach, village of, Madison County	170447	Sept. 5 1975, Emerg; July. 16, 1980, Reg; Aug. 19, 1991, Susp.	Feb. 5, 1982	Do.
Region VI				
Arkansas:				
Ashdown, city of, Little River County	050129	Apr. 14, 1975, Emerg; Aug. 3, 1982, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IX				
California:				
Grass Valley, city of, Nevada County	060211	Dec. 11, 1975, Emerg; Sept. 30, 1980, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: July 18, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17681 Field 7-21-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-7029]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	Apr. 12, 1991, Apr. 19, 1991 *Arizona Daily Sun.*	The Honorable Christopher Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Apr. 4, 1991	040020 B
California: Sacramento	City of Sacramento	July 10, 1991, July 17, 1991, *Sacremento Bee.*	The Honorable Anne Rudin, Mayor, City of Sacramento, 915 I Street, Sacramento, California 95814.	July 2, 1991	060266

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Sacramento	Unincorporated areas	July 10, 1991, July 17, 1991 *Sacramento Bee.*	Mr. Douglas Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 301, Sacramento, California 95814.	July 2, 1991	060262

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–17682 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Hendricks (Docket No. FEMA-7018).	Town of Plainfield	Mar. 14, 1991, Mar. 21, 1991, *Plainfield Messenger.*	The Honorable Richard A. Carluci, Town Manager, Town of Plainfield, 206 West Main Street, Plainfield, Indiana 46168-0065.	Mar. 1, 1991	180089
Indiana: Hendricks (Docket No. FEMA-7018).	Unincorporated areas	Mar. 14, 1991, Mar. 21, 1991, *The Republican.*	The Honorable Hursel Disney, Chairman, Hendricks County Board of County Commissioners, P.O. Box 97, Danville, Indiana 46122.	Mar. 1, 1991	180415

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17683 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register**. The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Searcy (City), White County (FEMA Docket No. 7017)	
Gin Creek:	
Approximately 0.09 mile downstream of Wood Lane	*263
Approximately 0.33 mile upstream of Sawmill Road	*298
Gin Creek Tributary No. 1:	
At confluence with Gin Creek	*264
Approximately 0.30 mile upstream of Julner Drive	*300
Maps available for inspection at the City Hall, 300 West Arch Avenue, Searcy, Arkansas.	
OKLAHOMA	
Comanche (City), Stephens County (FEMA Docket No. 7001)	
Cow Creek (Lower Reach):	
Approximately 1,400 feet upstream of Oklahoma, Kansas, Texas Railroad	*977
Approximately 1.1 miles upstream of confluence of Salt Creek	*993
Maps available for inspection at the City hall, 115 North 2nd Street, Comanche, Oklahoma.	
Stephens County (Unincorporated Areas) (FEMA Docket No. 7001)	
Cow Creek (Lower Reach):	
Approximately 400 feet downstream of Oklahoma, Kansas, Texas Railroad	*971
Approximately 1.1 miles upstream of confluence of Salt Creek	*993
Salt Creek:	
Approximately 1,200 feet upstream of Church Avenue	*1,000
Approximately 1,550 feet upstream of Church Avenue	*1,002
Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.	

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17684 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[DA 91-820]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules; editorial amendments.

SUMMARY: This order amends the rules to correct various provisions regarding the high frequency (HF) maritime channels between 4000-27500 kHz allocated to the maritime mobile service. It corrects coast station radiotelegraphy frequencies adopted by Commission in Report and Order, PR Docket No. 90-133 (FCC 91-17, 6 FCC Rcd 786 (1991), 56 FR 09897 (March 8, 1991)). It also reinstates two provisions regarding Alaska fixed stations that had been erroneously dropped from recent editions of the Rules.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: The following Order, DA 91-820, was adopted on June 28, 1991, and released July 2, 1991, by delegated authority of the Chief, Private Radio Bureau.

List of Subjects in 47 CFR Part 80

Coast stations, Marine safety, Radio, Ship stations, Telegraph, Telephone.

In the matter of editorial amendments of part 80 of the Commission's rules regarding revision of the high frequency (HF) channels for the maritime mobile service.

Order

Adopted: June 28, 1991.

Released: July 2, 1991.

By the Chief, Private Radio Bureau:

1. On January 30, 1991, the Commission released a report and order that substantially revised the channeling plans in the high frequency (HF) bands between 4000–27500 kHz allocated exclusively to the maritime mobile service.[1] These changes were due to revisions adopted by the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987. Since that time certain changes have come to light that need to be corrected. These changes are summarized herein.

2. In March 1991, after the report and order was released, the International Frequency Registration Board (IFRB) indicated replacement frequencies for Morse code telegraphy for coast stations that differed from those adopted by the Commission in 47 CFR 80.357(b). We have corrected the Rules to list the frequencies specified by the IFRB.[2]

3. While making changes to Part 80, we also are making two other corrections at this time: (1) Add new footnote 2 to the frequency 5167.5 kHz that is listed in the table of 47 CFR 80.373(i) and (2) add frequency 5164.5 kHz to the table in 47 CFR 80.387(b). These changes reinstate provisions that had been dropped erroneously during recent publications of the Rules.

4. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment procedures and the 30 day effective date provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

5. Accordingly, part 80 is amended as set forth below effective upon publication in the **Federal Register**.

6. Regarding questions on matters in this document, contact Kathryn S. Hosford at 202-632-7197.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Rule Changes

Part 80 of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.357 is amended by revising paragraph (b)(1) and the entries listed in columns entitled 16 MHz and 22 MHz of paragraph (b)(1) in their entirety to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) *Coast station frequencies*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users.

¹ Report and Order, PR Docket No. 90–133, FCC 91–17, 6 FCC Rcd 786 (1991).

² We also added those Morse code telegraphy frequencies that are currently licensed to coast stations but are not shown in the present Rules. For the bands affected by the IFRB changes, this will make the Rules more accurate.

Area	Coast Morse working frequencies (kHz)								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Central Pacific								17016.8 17026.0 17088.8	22479.0 22515.0 22557.0 22581.5
			* * *						
South Pacific								17064.8 17088.8 17220.5	22467.0 22593.5
Gulf of Mexico								17117.6 17170.4 17172.4 17230.1	22467.0 22668.5 22686.5 22688.0
Great Lakes									

Area	Coast Morse working frequencies (kHz)								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Hawaii								16978.4	22509.0
Puerto Rico									
North Atlantic								16933.2	
								16968.8	
								16973.6	
								16997.6	
								17021.6	
								17093.6	
								16904.9	
									22485.0
									22503.0
									22521.0
									22599.5
									22640.0
									22658.0
Central Atlantic								16916.5	22588.5
South Atlantic								16918.8	22503.0
								17093.6	22575.5
								17160.8	
								17170.4	
								17239.7	
North Pacific								17007.2	22539.0
Alaska									

3. Section 80.373 is amended by revising paragraph (i) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(i) *Frequencies in the 1600–5450 kHz band for private communications in Alaska.* The following simplex frequencies are available for assignment to private fixed stations located in the State of Alaska for radiotelephony communications with ship stations. These simplex frequencies are available for use by authorized ship stations for radiotelephony communications with private fixed stations located in the State of Alaska.

Private communications in Alaska Carrier frequencies (kHz)

1619.0	2382.0	2563.0
1622.0	2419.0	2566.0
1643.0	2422.0	2590.0
1646.0	2427.0	2616.0
1649.0	2430.0	3258.0
1652.0	2447.0	[1] 3261.0
1705.0	2450.0	4366.0
1709.0	2479.0	4369.0
1712.0	2482.0	4396.0
2003.0	2506.0	4402.0
2006.0	2509.0	4420.0
2115.0	2512.0	4423.0
2118.0	2535.0	[2] 5167.5
2379.0	2538.0	

[1] Ship stations must limit use of 3261.0 kHz to communications over distances which cannot be reached by the use of frequency below 2700 kHz or above 156.000 MHz.

[2] The frequency 5167.5 kHz is available for emergency communications in Alaska. Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

* * * * *

4. Section 80.387 is amended by revising paragraph (b) to read as follows:

§ 80.387 Frequencies for Alaska fixed stations.

* * * * *

(b) *Alaska-private fixed station frequencies:*

Carrier frequencies (kHz)

1643.0	2430.0	2773.0
1646.0	2447.0	3164.5
1649.0	2450.0	3183.0
1652.0	2463.0	3196.0
1657.0	2466.0	3201.0
1660.0 [1]	2471.0	3258.0
1705.0	2479.0	3261.0
1709.0	2482.0	3303.0
1712.0	2506.0	3365.0
2003.0	2509.0	4035.0
2006.0	2512.0	5164.5
2115.0	2535.0	[3] 5167.5
2118.0	2538.0	5204.5
2253.0	2563.0	[2] 6948.5
2400.0	2566.0	[3] 7368.5
2419.0	2601.0	8067.0
2422.0	2616.0	8070.0
2427.0	2691.0	[2] 11437.0
		[2] 11601.5

[1] Use of 1660.0 kHz must be coordinated to protect radiolocation on adjacent channels.

[2] Peak envelope power must not exceed 1 kW for radiotelephony. Teleprinter use is authorized.

[3] The frequency 5167.5 kHz is available for emergency communications in Alaska. [4]Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

* * * * *

[FR Doc. 91–17600 Filed 7–24–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Department of Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised the Defense FAR Supplement to permit defense contractors to recover offset administrative costs from foreign governments under Foreign Military Sales (FMS) contracts. This revision was effective July 15, 1991, upon issuance of Departmental Letter 91–015.

DATES: *Effective Date:* July 15, 1991.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 26, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 91–008 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, attn: Mrs. Alyce Sullivan, DAR Council, OUSD(A), The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, DAR Council (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule to allow contractors to recover reasonable business expenses for offset administrative costs from foreign customers under FMS contracts. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

B. Background

The Defense Policy Advisory Committee on Trade (DPACT) recommended making costs associated with the administration of offset agreements between contractors and foreign governments allowable costs. Presently only offset costs associated with a DoD-approved offset agreement are allowable, a circumstance which occurs very infrequently.

As revised, in cases where the foreign purchaser requires offsets against a defense sale through Foreign Military Sales, the Letters of Offer and Acceptance (LOAs) may state that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor. The LOAs should also note that the U.S. Government assumes no obligation to administer or satisfy the offset requirement or to bear any of the associated costs.

Estimated costs associated with offset agreements must be included in FMS pricing information provided to foreign governments, prior to submittal of the LOA. Examples of offset administrative costs are included in the DFARS revisions.

C. Regulatory Flexibility Act

The DFARS revisions are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.* because it is not anticipated that small businesses would have offset agreements with foreign governments. A Regulatory Flexibility analysis has not been prepared. However, comments from small entities will be considered in formulating the final rule.

D. Paperwork Reduction Act

The rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

225.7304 [Amended]

2. Section 225.7304(c)(1)(iii) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(iii) Offset administrative costs.

(A) A U.S. defense contractor may recover, under an FMS contract, costs incurred to implement specific requirements of its offset agreement with a foreign government or international organization if the FMS Letter of Offer and Acceptance (LOA) contains a note that:

(*1*) Specifically addresses offsets;

(*2*) Advises foreign governments that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor; and

(*3*) Includes a statement that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(B) Offset administrative costs must be reasonable and readily identifiable. Estimated offset administrative costs must be included in FMS pricing information provided to the foreign government as early as possible, but prior to submittal of the LOA.

(C) Examples of offset administrative costs are:

(*1*) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(*2*) Off-shore operation for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(*3*) Marketing assistance and related technical assistance, transfer of technical information and related training;

(*4*) Employee travel and subsistence costs; and

(*5*) Taxes and duties.

* * * * *

[FR Doc. 91–17613 Filed 7–24–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces a change in the fishing days per calendar week for the recreational fishery in the exclusive economic zone (EEZ) from Humbug Mountain, Oregon, to Horse Mountain, California. In accordance with the preseason notice of 1991 management measures, this fishery has been closed Tuesday and Wednesday of each week. The Director, Northwest Region, NMFS (Regional Director) has determined that due to high catch rates of chinook salmon, this fishery should be closed Monday through Thursday of each week effective 0001 hours local time, July 23, 1991, with the exception

that on September 2, 1991 (Labor Day) the fishery will be open. This action is necessary to conform to the preseason notice of 1991 management measures and is intended to ensure conservation of chinook salmon.

DATES: *Effective:* Modification of the recreational fishing week to close Monday through Thursday in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California is effective at 0001 hours local time, July 23, 1991, with the exception that on September 2, 1991 (Labor Day) the fishery will be open. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until August 5, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will open on May 25 and continue through September 30, with Tuesday and Wednesday of each week being closed. NOAA also announced that "Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on STT [Salmon Technical Team] evaluation on or about July 10."

Based on the best available information on July 10, the recreational catch is estimated to be about 13,000 chinook salmon through July 11. If the current season structure were to continue through the scheduled season closing date of September 30, the total recreational catch is projected to be about 33,000 chinook salmon. A two-fifths reduction in the recreational fishing week for the remainder of the season, from five days to three days open per calendar week, is expected to dampen catch rates and keep the total catch close to the 20,000 chinook guideline. Concern was expressed that recreational fishermen be provided full fishing opportunity during the Labor Day weekend. Therefore, the recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will be closed Monday through Thursday of each week effective 0001 hours local time, July 23, 1991, with the exception that on September 2, 1991 (Labor Day) the fishery will be open. Inseason modification in the recreational fishing days per calendar week is authorized by regulations at § 661.21(b)(1)(iii).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to the time listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this action affecting the recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California. The states of Oregon and California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 5, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–17606 Filed 7–19–91; 2:58 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures.

SUMMARY: NOAA announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to the U.S.-Mexico border at midnight, July 11, 1991, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border are reopened for all salmon species except coho salmon at 0001 hours July 12, 1991. The Director, Northwest Region, NMFS (Regional Director), determined that the subarea catch ceiling for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 11. NOAA also announces the closure of the commercial salmon fishery for all salmon species in the EEZ from Cape Falcon to Cascade Head, Oregon, at midnight, July 14, 1991, to ensure that the overall coho salmon quota for the area south of Cape Falcon is not exceeded; the regularly scheduled commercial fishery in this subarea is reopened for all salmon species except coho salmon at 0001 hours July 15, 1991. The Regional Director determined that the overall catch quota for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 14. These actions are necessary to conform to the preseason notice of 1991 management measures and are intended to ensure conservation of coho salmon.

As announced in the preseason notice of 1991 management measures, a separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border, which will be available upon attainment of the overall catch quota or the subarea catch ceiling for coho salmon minus the 5,000 deduction. The Regional Director has determined that the 5,000 coho salmon reserve will not be made available immediately, so that the commercial fishery in the subarea from Horse Mountain to Point Arena, California, which does not open until August 1, 1991, may have a portion of its season open for all salmon species. Timing of the availability of the 5,000

coho salmon reserve will be announced at a later date.

DATES: *Effective:* Closure of the EEZ from Cascade Head, Oregon, to the U.S.-Mexico border to commercial fishing for all salmon species was effective at 2400 hours local time, July 11, 1991. Regularly scheduled commercial fisheries in this subarea reopened for all salmon species except coho salmon effective at 0001 hours local time, July 12, 1991. Closure of the EEZ from Cape Falcon to Cascade Head, Oregon, to commercial fishing for all salmon species was effective at 2400 hours local time, July 14, 1991. Regularly scheduled commercial fisheries in this subarea reopened for all salmon species except coho salmon effective at 0001 hours local time, July 15, 1991. Actual notice to affected fishermen was given prior to those times thorugh a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Comments: Public comments are invited until August 8, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In its emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall combined catch and hooking mortality impact of 390,000 coho and an overall catch quota of 361,000 coho salmon. Within this overall catch quota, there is a subarea catch ceiling that allows a harvest of no more than 271,000 coho salmon south of Cascade Head, Oregon. A separate catch quota of 5,000 coho salmon was reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border, which will be available upon attainment of the overall catch quota or the subarea catch ceiling minus the 5,000 deduction, which effectively reduces the overall catch quota to 356,000 coho salmon and the subarea catch ceiling to 266,000 coho salmon prior to release of the 5,000 coho salmon reserve.

According to the best available information on July 10, the commercial fishery catch south of Cascade Head, Oregon, was projected to reach the subarea catch ceiling of 266,000 coho salmon by midnight, July 11. Therefore, commercial salmon fishing from Cascade Head, Oregon, to the U.S.-Mexico border, was closed effective 2400 hours local time, July 11. In accordance with the preseason notice of 1991 management measures (Table 1 at 56 FR 21319), regularly scheduled commercial fisheries from Cascade Heads, Oregon, to the U.S.-Mexico border, reopened for all salmon species except coho salmon effective 0001 hours local time, July 12, 1991.

Furthermore, according to the best available information on July 12, the commercial fishery catch south of Cape Falcon, Oregon, was projected to reach the overall catch quota of 356,000 coho salmon by midnight, July 14. Therefore, commerical salmon fishing from Cape Falcon to Cascade Head, Oregon, was closed effective 2400 hours local time, July 14. In accordance with the preseason notice of 1991 management measures, the regularly scheduled commercial fishery from Cape Falcon to Cascade Head, Oregon, reopened for all salmon species except coho salmon effective 0001 hours local time, July 15, 1991.

As stated above, the separate catch quota of 5,000 coho salmon, which has been reserved preseason for the commerical fishery from Horse Mountain, California, to the U.S.-Mexico border, will become available upon attainment of the overall catch quota or the subarea catch ceiling for coho salmon minus the 5,000 deduction. The Regional Director has determined that the 5,000 coho salmon reserve will not be made available immediately, so that the commercial fishery in the subarea from Horse Mountain to Point Area, California, which does not open until August 1, 1991, may have a portion of its season open for all salmon species. Timing of the availability of the 5,000 coho salmon reserve will be announced at a later date.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these closures was given prior to the times listed above by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding these actions affecting the commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border. The States of Oregon and California will manage the commercial fisheries in state waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 8, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-17609 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-403PR]

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule authorizes expenditures and establishes an assessment rate for the 1991–92 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Almond Board of California (Board), which is responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by August 5, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. This order is effective under Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 110 handlers of California almonds and there are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of almond handlers and producers may be classified as small entities.

The marketing order for California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are acted upon by the Board before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board met on June 13, 1991, and unanimously recommended 1991–92 marketing order program expenditures of $11,540,095 and an assessment rate for the 1991–92 crop year of 2.25 cents per pound (kernelweight basis). The board also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.75 cents of the 2.25-cent-per-pound assessment rate.

The 2.25-cent-per-pound 1991–92 recommended assessment rate compares with an actual 1990–91 assessment rate of 2.77 cents per pound. The advertising portion of the assessment rate has been 2.5 cents per pound since 1979. The decrease to 1.75 cents per pound is because the current Board favors more generic advertising and promotion conducted by the board as opposed to creditable brand advertising conducted by individual handlers. The .5-cent-per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is .23 cent per pound higher than the .27-cent-per-pound 1991–91 assessment rate. The higher rate is needed to cover increased personnel costs for compliance and promotional activities. Revenues are expected to be $2,596,250 from administrative assessments ($1,601,250 from 1991–92 and $995,000 from 1990–91), $800,000 from advertising assessments, $35,000 from interests and $330,000 from the sale of generic packages for a total of $3,761,250.

Projected expenses of $11,540,095 for 1991–92 compare with 1990–91 budgeted expenses of $18,946,254. Major budget categories for the 1991–92 almond crop

year are $1,974,000 for public relations, $1,158,500 for general administration, $413,095 for production research, $70,000 for crop estimation, and $100,000 for an econometric study. Comparable actual expenditures for the 1990–91 almond crop year were $1,575,675, $957,600, $393,179, and $119,800, respectively. No econometric study was conducted last year. The increase in the general administration category included $100,000 for a management study to identify new areas for the Board to direct its efforts and to possibly restructure its management, as well as additional funds to audit each handler every year.

Administrative expenditures are expected to total $4,061,306. Total revenue to meet these expenses is projected to be $3,761,250 plus a cash carry-in from 1990–91 of $300,056. The remaining $7,472,500 of proposed 1991–92 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1991–92 marketable California almond production of 427 million pounds. This figure also assumes that all handlers receive full credit against their 1.75 cents per pound creditable assessment obligation. Unexpected funds from 1991–92 may be carried over to cover expenses during the first four months of the 1991–93 crop year.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. Although the board may use funds from the previous year for up to four months in the new crop year, Departmental approval of the expenditure categories is necessary in order for the Board to use those funds.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. [This section will not be published in annual Code of Federal Regulations.]

2. Section 981.338 is added to read as follows:

§ 981.338 Expenses and assessment rate.

Expenses of $11,540,095 by the Almond Board of California are authorized for the crop year ending on June 30, 1992. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to section 981.41, but not to exceed 1.75 cents per pound of almonds (kernelweight basis).

Dated: July 22, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17713 Filed 7–24–91; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM–61–1]

Sierra Club of North Carolina; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition, as amended, for rulemaking submitted by the Sierra Club of North Carolina (PRM–61–1). The petition and amendment requested that the NRC amend its regulations in 10 CFR part 61 to permit the licensing of a zero-release low-level radioactive waste disposal facility within the saturated zone. The NRC is denying the petition for the following reasons: (1) The design of a zero-release engineered facility for extremely long time periods is beyond the current level of demonstrated technology known to the NRC staff, and (2) the existing rule allows for saturated zone disposal under a specific hydrologic condition, however, the effort to develop regulations for enhanced engineered saturated zone disposal, under a broad range of hydrologic conditions, would be significant and the NRC is not aware of interest in this type of disposal by State authorities.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

SUPPLEMENTARY INFORMATION:

The Petition

On April 12, 1990 (55 FR 13797), the Nuclear Regulatory Commission published notice of receipt of a petition for rulemaking by the Sierra Club of North Carolina, and on June 7, 1990 (55 FR 23206), the NRC published a subsequent amendment to the original petition for rulemaking. The petition and amendment requested that the Commission amend 10 CFR part 61 to adopt regulations that would permit the design and construction of a zero-release low-level radioactive waste disposal facility entirely below the 100 year seasonal water table. The petitioner asserts that amended regulations are necessary in order for the General Assembly of North Carolina to consider a waiver of a North Carolina statute which requires that the bottom of a low-level waste facility be at least seven feet above the seasonal high water table.

North Carolina, which is an Agreement State under section 274b of the Atomic Energy Act, is required to impose standards which are equivalent, to the extent practicable, to those issued by the NRC. Therefore, the North Carolina Radiation Protection Commission, which determines appropriate regulations for radiation protection and has a licensing role for a low-level radioactive waste disposal facility, must meet the requirements of 10 CFR part 61, subparts C and D. The petitioner states that until the NRC acts favorably in regard to this petition, the North Carolina Radiation Protection Commission will be unable to approve rules for saturated zone siting and zero-release technology. The petitioner asserts that without amended NRC regulations, the North Carolina Low-Level Radioactive Waste Management Authority cannot undertake to consider a site and technology which could not be considered licensable by the Radiation Protection Commission.

According to the petitioner, neither the Radiation Protection Commission nor the Management Authority can recommend to the Joint Selection Committee on the Management of Low-Level Radioactive Waste that the General Assembly of North Carolina waive the provision of the statute which requires placing the bottom of a facility at least seven feet above the seasonal high water table. The petitioner provided a sample design for a LLW vault which he asserted would be immune to water infiltration over long time periods, and therefore, disposal could be safely accomplished within the saturated zone. Petitioner asserts that current NRC and North Carolina regulations preclude much of the state as potential LLW sites due to high water tables throughout the state.

The petitioner believes the performance objectives for low-level radioactive waste disposal facilities can best be realized by a finding that water impermeable vaults in the saturated zone meet the requirement that diffusion be the predominant mechanism of radioactivity transport from disposed low-level radioactive waste. Further, the petitioner offers that three levels of water impermeable containment (vault, overpack, and high integrity container) provide a credible basis for developing regulations for a disposal facility designed for zero-release.

The petitioner states that the NRC, by a timely action permitting disposal facility placement in the saturated zone, providing that specified siting and design requirements are met, will facilitate corresponding changes in the governing statutes and in the rules of the North Carolina Radiation Protection Commission. The petitioner asserts that the changes are required if the North Carolina Low-Level Radioactive Waste Management Authority is to consider and authorize a contractor to site, design and construct a zero-release, saturated zone located, inadvertent intruder protected, disposal facility for the Southeast Compact by the planned startup date of January 1, 1993.

In the amendment to the original petition, the petitioner provided new and relevant information regarding polymer and concrete technology. The petitioner requested that the Commission consider the new information on polymer concrete technology as an alternative means for realizing the objective of the original petition.

Public Comments on the Petition

The notices of filing of petition and amendment for rulemaking in the **Federal Register** invited interested persons to submit written comments concerning the petition. The NRC received 14 comment letters in response to the original petition and the amendment. Two comment letters were received from States, three from private organizations, two from associated industries or their representatives, one from a utility, and six from private individuals. The commenters generally focussed on the two main elements of the petition—burial within the saturated zone and use of a zero release structure.

One commenter supported the concept of burial within the saturated zone. The commenter, from another state, agreed that this concept allows far more of the state to be potentially analyzed as a disposal site. Eleven commenters opposed burial within the saturated zone. The commenters stated that this type of disposal is non-conservative and not supportable. As indicated in the reasons for denial, NRC agreed with the commenters that the current level of technology cannot support a rule change allowing saturated zone burial, unless the exception in § 61.50(a)(7) can be demonstrated.

Two of the commenters liked the goal of a zero release structure. However, they felt that there is too much uncertainty in the long-term performance of a zero release structure to warrant burial in the saturated zone. As indicated in the reasons for denial, NRC believes that the design of a zero-release engineered facility for extremely long time periods is beyond the current level of demonstrated technology known to the NRC staff. Two commenters opposed a zero release rule. One commenter referenced the Environmental Impact Statement (EIS) in support of 10 CFR part 61. The commenter noted that in the EIS, the NRC concluded that zero release is not necessary to adequately protect public health and safety. This commenter also stated that the petitioner has not provided adequate evidence to warrant any changes to the existing position, and NRC agrees with this comment.

Reasons for Denial

The NRC is denying the petition, as amended, for the following reasons:

1. The concept of a zero release engineered facility in perpetuity is beyond the current level of demonstrated technology known to the NRC staff.

2. To NRC's knowledge, States' authorities have not shown an interest in placing a LLW site within the saturated zone.

The NRC agrees with the petitioner that there have been significant advances in concrete type structures and materials. Many states are planning to propose the use of concrete structures for LLW disposal facilities. The NRC will continue to support research into the use of engineered structures to enhance the performance of LLW disposal facilities. The NRC is also conducting research to assess the performance of concrete structures in the saturated and unsaturated zones.

The following discussion more fully explains the reasons for denying the petition.

1. The design concept highlights the use of fiber-reinforced, polymer concrete in the vault structure as a major means of ensuring that the structure would remain virtually hermetically sealed for an indefinitely long period of time. It is true that such concretes have performed well in the field for periods of time on the order of a decade or so. This experience has not been sufficient, however, to enable the staff to conclude that there is reasonable assurance that a structure constructed of these materials would remain almost entirely sealed for centuries. The lack of demonstrated performance, or a credible basis, for extrapolating from short term studies with the proposed fiber-reinforced polymer concrete would make it very difficult, if not impossible, to support a finding in a hearing that there is reasonable assurance for long-term containment of the low-level radioactive waste in the hermetically sealed vault structure. The staff is supported by NRC consultants from the U.S. Army Corps of Engineers and the National Institute of Standards and Technology to recognizing the uncertainties that are inherent in the long-term performance of the proposed fiber-reinforced polymer concrete.

Another major source of uncertainty in the proposed design concept is potential leakage at construction joints and the locations where the vault roof would meet the vault walls. Conventional water stops for concrete structures are not expected to last for more than about 50 years. Even with improved materials or methods of construction at the joints, it is not clear that the proposed design would ensure zero leakage over extended periods of time. Thus, it is the staff's opinion that preventing leakage at joints for a submerged vault structure for centuries would present a design and construction problem that could be insurmountable.

In summary, the capacity to design for zero-release has not been demonstrated. The NRC believes that structural stability can be assured for long-periods of time even with conventional construction materials. It is quite

another matter, however, to expect that a concrete structure alone (even one constructed of "improved" materials) would ensure zero-release by remaining hermetically sealed for centuries. Ultimately, the sealing of the "constructed stagnant saturated zone" could fail and leakage develop which, even under small hydraulic gradients, would result in flow and transport of radionuclides. Thus, the NRC concludes that the proposed design concept would not provide reasonable assurance of zero-release.

2. The development of regulations meeting the requirements of the petitioner would be extremely difficult. The concept upon which 10 CFR part 61 is based is that the very slow release of radionuclides that meet regulatory requirements is acceptable. Therefore, designing a perpetual facility for "zero release" might require NRC to develop an entirely new regulation. Research would be required to determine not only the feasibility of the concept, but that practical implementation is possible. This type of research would be costly, time consuming, and uncertain because extrapolation over long time periods from relatively short time periods of data is at best an educated guess.

To NRC's knowledge, no State indicated that it would give serious consideration to an engineered structure within the saturated zone during the development of 10 CFR part 61. Therefore, because of the uncertainty that regulations could be developed, and if developed, whether any States would seriously consider this type of proposal, the NRC believes that using limited resources in an attempt to meet petitioners proposal would not be appropriate.

Dated at Rockville, Maryland this 11th day of July 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-17696 Filed 7-24-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1428]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would enumerate the types of vessels of war and special naval equipment controlled under the United States Munitions List (USML). This proposed rule is intended to reduce the burden on munitions exporters by eliminating most support and service craft and floating dry docks from the USML.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA-6, room 228, Department of State, Washington, DC 20520, or sent by facsimile to (703) 875-6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State (703-875-6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends § 121.15 which enumerates vessels of war and special naval equipment. In implementation of the President's directive, the Department reviewed, in whole or in part, COCOM IL's 1416, 1425, 1431, 1391, 1312, 1371, 1370, 1099 and 1091, and determined that the only overlap between the USML and the COCOM Industrial List is IL 1425 for floating docks. The Department determines further that the following items no longer require control under the ITAR and will be removed from the USML and delisted from § 121.15 of the ITAR: Fleet support ships (submarine rescue ships will remain on the USML for significant national security interests), yard tugs, yard tankers, yard lighters, floating dry docks, icebreakers, Coast Guard oceanography vessels, buoy tenders, Coast Guard tugs and light ships. They will be under the regulatory control of the Department of Commerce. Prior to publication of a final **Federal Register** notice concerning vessels of war, the Department of Commerce will establish the appropriate Export Control Commodity Numbers (ECCN) for the above listed items.

Additionally, this amendment would revise and update the description of vessels of war to clarify which naval vessels are covered by the USML and require export approval under the ITAR.

Finally, this amendment eliminates the use of military designators of the vessels in most sub-paragraphs and uses them in other sub-paragraphs as examples only; they are not to be viewed as all-inclusive.

The Department of State believes category VI of the USML does not control any commodity currently on the Commodity Control List, nor is it is the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters on that respect. The relevant information collection is to be reviewed by the

Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.15 "Vessels of war and special naval equipment": is revised to read as follows:

§ 121.15 Vessels of war and special naval equipment.

Vessels of war means vessels, waterborne or submersible, designed, modified, or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) *Combatant vessels*—(1) *Warships (including nuclear-powered versions):*

(i) Aircraft carriers.
(ii) Battleships.
(iii) Cruisers.
(iv) Destroyers.
(v) Frigates.
(vi) Submarines.

(2) *Other combatants.*

(i) Patrol Combatants (e.g., including but not limited to PHM).
(ii) Amphibious Aircraft/Landing Craft Carriers.
(iii) Amphibious Materiel/Landing Craft Carriers.
(iv) Amphibious Command Ships.
(v) Mine Warfare Ships.
(vi) Cost Guard Cutters (i.e. WHEC's and WMEC's).

(b) Auxiliaries—(1) *Combat Logistics Support.*

(i) Underway Replenishment Ships.
(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) *Support Ships.*

(i) Submarine Rescue Ships.
(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGS, AGOR, AGOS, AH, AP, ARC, ARL, AVB, AVM, AVT).

(c) *Combatant Craft*— (1) *Patrol Craft.*

(i) Coastal Patrol Combatants.
(ii) River, Roadstead Craft (including swimmer delivery craft).
(iii) Coast Guard Patrol Craft.

(2) *Amphibious Warfare Craft.*

(i) Landing Craft (e.g., including but not limited to: LCAC, LCM, LCPL, LCU, LWT, SLWT).
(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) *Mine Warfare Craft.*

(i) Mine countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(d) *Support and Service Vessels.* (1) Miscellaneous (e.g., including but not limited to: APL, DSRV, DSV, IX, WIX, NR, YFRT, YHLC, YP, YR, YRB, YRDH, YRDM, YRR, YSD).

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editoral Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17432 Filed 7–24–91; 8:45 am]

BILLING CODE 4710–25–M

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22 CFR Part 121

[Public Notice 1429]

Amendments to the International Traffic in Arms Regulations (ITAR), Category V. Explosives Propellants and Incendiary Agents

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: Section 121.12 of the ITAR defines military explosives covered under Category V. The proposed change would modify ITAR Category V, "Military Explosives", § 121.12, by using the list of chemicals in the COCOM International Munitions List (IML) Category 8 "Military Explosives and Fuels, as the basis for the USML Category V. In modifying the items covered by Category V to agree with the COCOM IML Category 8, a list has been established which would standardize U.S. export administration procedures with those of our COCOM partners. In this instance, the COCOM IML is considered to be a list which more accurately reflects the current state of the art in this technology area.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Terry L. Davis, U.S. Department of State, Office of Defense Trade Controls, SA–6, rm. 228, Washington, DC. 20522–0602, fax# 703–875–6647.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, U.S. Department of State, Office of Defense Trade Controls, tel. 703 875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the U.S. Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic In Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends § 121.12 of the ITAR.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

The Department reviewed ILs 1601, 1715 and 1746(a) including the Core List proposal and found no overlap with the USML. The review then focused primarily on redrafting Category V so that it would be consistent with the COCOM International Munitions List (IML) 8. The Department of State believes Category V of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

As a result of the review directed by the President, the following explosives, which have been removed from the IML, are being removed from the USML and moved to the jurisdiction of the Department of Commerce, pending the

imposition of controls under section 6 of the Export Administration Act, "Foreign Policy Controls for Antiterrorism and Regional Stability": ammonium picrate, black powder made with potassium nitrate or sodium nitrate, ethylenedinitramine, hexanitrodiphenylamine, nitrostarch, tetranitronaphthalene, trinitroanisol, trinitronaphthanine, and trinitroxylene.

New paragraphs identifying the following explosives, additives and stabilisers are being added to the USML:

—Any metal fuels or alloys of metal fuels identified in paragraph (b) of § 121.12, encapsulated with any other metals or alloys in the same paragraph;
—Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;
—NQ;
—With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;
—Carboranes, decaborane, pentaborane and derivatives;
—HMX;
—Octogen, octogene;
—HNS, DATB, TATB, TAGN;
—Titanium subhydride of stiochiometry TiH 0.65–1.68;
—DNGU, DINGU, TNGU, SORGYL, TACOT, DIPAM, PYX, NTO or ONTA;
—CP, BNCP, ADNBF, CL–14, K–6 or Keto RDX, K–55 or keto bicyclic HMX;
—TNAZ, TNAD, CL–20 or HNIW, chlathrates of CL–20; polynitrocubane with more than four nitro groups;
—SR–12, NMMO, AMMO, TEPAN, TEPANOL;
—Cyanoethylated polyamine adducted with glycidol;
—FPF–1, FPF–3;
—Polyglycidylnitrate;
—1, 2, 4,-trihydroxybutane;
—1, 3, 5-trichlorobenzene;
—BCMO;
—Low (less than 10,000) molecular weight, alcohol-functionalised, poly(epichloroyhdrin) and (epichlorhydrindiol);
—Propylimine:
—1, 3, 5, 7,-tetraacetyl-1, 3, 5, 7-tetraazacyclooctane;
—Binitroazetidine-t-butyl salt;
—HBIW, TAIW;
—1, 4, 5, 8-tetraazadecalin;
—Protech.

The only addition to the USML of an item not currently on the IML is the military grade of the binder Hydroxy-terminated Polybutadiene (HTPB). During round 2 negiotiations of CoCom Core List #2 "Materials and Processes", it was agreed that the military grade of HTPB (defined as a hydroxyl value of less than 0.77 meg/q, a viscosity at 30 degrees C of less than 47 poise, and a functionality of 2.28) should be placed on the CoCom IML. The commercial grade of HTPB will continue to be subject to the jurisdiction of the Department of Commerce under controls imposed by the Missile Technology Control Regime.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reason set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisiting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. Section 121.1, Category V Explosives, Propellants, and Incendiary Agents is amended to remove the word "and" and add after Incendiary Agents "and their Constituents".

3. Section 121.12, "Military Explosives", revised to read as follows:

§ 121.12 Military explosives.

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate. Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:

(1) Spherical aluminium powder with particles of uniform diameters of less than 500 microns and aluminium content of 97% or greater;

(2) Metal fuels in particle sizes of uniform diameter less than 500 microns whether spherical, atomized, spheroidal, flaked or ground, consisting of 97% or more of any of the following: Zirconium, boron, magnesium and alloys of these; beryllium;

(3) Any of the foregoing metals or alloys of paragraph (b) of this section, encapsulated with any other metals or alloys in paragraph (b) of this section;

(4) Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;

(5) Nitroglycerin;

(6) Trinitrophenylmenthylnitramine (TETRYL);

(7) Trinitrotoluene (TNT);

(8) Nitroguanidine (NQ);

(9) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;

(10) Carboranes; decaborane; pentaborane and derivatives;

(11) Cyclotetramethylenetetranitramine (HMX); octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; (octogen, octogene);

(12) Hexanitrostilbene (HNS);

(13) Diaminotrinitrobenzene (DATB);

(14) Triaminotrinitronbenzene (TATB);

(15) Triaminoguanidinenitrate (TAGN);

(16) Titanium subhydride of stiochiometry TiH 0.65–1.68;

(17) Dinitroglycoluril (DNGU, DINGU); tetranitroglycoluril TNGU, SORGUYL);

(18) Tetranitrobenzotriazolobenzotriazole (TACOT);

(19) Diaminohexanitrobiphenyl (DIPAM);

(20) Picrylaminodinitropyridine (PYX);

(21) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);

(22) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;

(23) Ammonium perchlorate;

(24) 2-(5-cyanotetrazolato) penta amminecobalt (III) perchlorate (CP);

(25) trans-bis (5-nitrotetrazolato) penta amminecobalt (III) perchlorate (or BNCP);

(26) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;

(27) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofuroxan);

(28) 2,4,6-trinitro-2,4,6-triaza-cyclohexanone (K–6 or keto-RDX);

(29) 2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo (3,3,0)-octanone-3(tetranitrosemiglycoluril, K–55, or ketobicyclic HMX);

(30) 1,1,3-trinitroazetidine (TNAZ);

(31) 1,4,5,8-tetranitro-1, 4,5,8-tetraazadecalin (TNAD);

(32) Hexanitrohexaazaisowurtzitane (CL–20 or NNIW; and chlathrates of CL–20);

(33) Polynitrocubane with more than four nitro groups;

(34) Ammonium dinitramide (or SR–12);

(35) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro- 1,3,5-trinitro-1,3,5-triazine; 1,3,5–trinitro-1,3, 5–triaza-cyclohexane; hexogen, hexogene;

(36) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);

(37) Pentaerythritol Tetranitrate (PETN)

(38) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl value of less than 0.77 meg/g, a viscosity at 30 degrees C of less than 47 poise, and a functionality of 2.28, and Hydroxy terminated Polybutadiene (HTPB) with ferrocene additives such as butacene;

(b) "Additives" include the following:

(1) Glycidylazide Polymer (GAP) and its derivatives;

(2) Polycyanodifluoroaminoethylene-oxide (PCDE);

(3) Butanetrioltrinitrate (BTTN);

(4) Bis-2-fluoro-2,2-dinitroethylformal (FEFO);

(5) Butadienenitrileoxide (BNO);

(6) Catocene, N-butyl-ferrocene and other ferrocene derivatives;

(7) Bis(2, 2-dinitropropyl) formal and acetal;

(8) 3-nitraza-1,5-pentane diisocyanate;

(9) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluroamino groups;

(10) 1,2,3-Tris [1,2-bis(difluoroamino)ethoxy] propane; Tris vinoxy propane adduct, (TVOPA);

(11) Bisazidomethyloxetane (BAMO) and its polymers;

(12) Nitratomethylmethyloxetane (NMMO) Azidomethylmethyloxetane (AMMO);

(13) Polynitroorthocarbonates;

(14) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine;

(15) Tetraethylenepentamineacrylonitrile-glycidol (TEPANOL); cyanoethylated polymine adducted with glycidol;

(16) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;

(17) Basic copper salicylate; lead salicylate;

(18) Lead beta resorcylate;

(19) Lead stannate, lead maleate, lead citrate;

(20) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO) and its derivatives;

(21) Organo-metallic coupling agents, specifically: Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato[0], or LICA 12); Titanium IV, [(2-propenolato-1)methyl, n-propanolatemethyl] butanolato[1, tris(dioctyl)pyrophosphato, KR3538; Titanium IV, [(2-propenolato-1)methyl, n-propanolatemethyl] butanolato[1, tris(dioyctyl)phosphato, or KR3512;

(22) FPF-1 (poly-[2,2,3,3,4,4-septafluoro pentane-2,5-diolformal]);

(23) FPF–3 (poly-[z,4,4,5,5,6, 6-heptafluoro-2-trifluoromethyl-3-oxaheptane–1, 7-diolformal]);

(24) Polyglycidylnitrate.

(c) "Precursors" include the following:

(1) Guanidine nitrate;

(2) 1,2,4-trihydroxybutane (1,2,4-butanetriol);

(3) 1,3,5-trichlorobenzene;

(4) Polynitroorthocarbonates;

(5) Bischloromethyloxetane (BCMO);

(6) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol);

(7) Propylimine;

(8) 1,3,5,6,-tetraacetyl-1,3,5,7-tetraaza-cyclooctane;

(9) Dinitroazetidine-t-butyl salt;

(10) Hexabenzylhexaazaisowurtzitane (HBIW);

(11) Tetraacetyldibenzylhexaazaiso-wurtzitane (TAIW);

(12) 1,4,5,8-tetraazadecalin.

(d) Stabilisers include the following:

(1) N-Methyl-p-nitroaniline:

(2) Protech TM

(e) Any substance, mixture or fabricated explosive charge, as follows:

(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;

(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;

(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for aluminised compositions;

(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenised, 250 seconds for non-metallised and 266 seconds for metallised compositions;

(5) "Composite" propellants using polymerized inert or active bonding materials, muddled and cast in one place, with specific impulse of 230 seconds or a combustion rate exceeding 12mm/s;

(6) All fuels capable of releasing energy equal to or more than 40 MJ/Kg;

(7) Fuels or propellants for ramjets or rocket-ramjets;

(8) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 21 degrees Celsis;

(9) Any other gun propellants having a force constant greater than 1,200 kJ/kg;

(10) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K or (−40 degrees C).

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17433 Filed 7–24–91; 8:45 am]

BILLING CODE 4710–25–M

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22 CFR Part 121

[Docket No. 1430]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise and clarify

Category XI (Military and Space Electronics) of the United States Munitions List (USML). This proposed rule is intended to reduce the burden on munitions exporters by reducing the necessity for commodity jurisdiction procedures that could arise from proposed exporters of articles under Category XI, as currently written.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Mr. Martin O'Mara, Office of Defense Trade Controls, Department of State, Washington, DC 20520. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Martin O'Mara, Office of Defense Trade Controls, Department of State, (703–875–6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1,1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends section 121, Category XI of the ITAR which defines military and space electronics controlled by the USML.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

In implementation of the President's directive, the Department reviewed, in whole or in part, COCOM ILs 1501(a)(b) and (c), 1510, 1517, 1522, 1526, 1529, 1531, 1533, 1537, 1558, 1564, 1565, 1566, 1567, 1572, 1574, 1584, and 1746. In the area of military training equipment, the Department examined eight dual-use items (ILs 1746, 1522, 1529, 1531, 1533, 1537, 1565 and 1566), and found no overlap. With regard to military electronics, the Department reviewed sixteen COCOM ILs. The Department found no overlaps in the following ILs: 1501(a) (b), 1510, 1517, 1518, 1529, 1531, 1533, 1537, 1558, 1564, 1565, 1567, 1572, 1574, and 1584. The Department determined that the one item which does overlap no longer requires control under the ITAR and will be removed from the USML: IL 1526 (armored coaxial cable). The Department of State believes Category XI as described in this **Federal Register** notice does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

This amendment additionally revises Category XI of the USML to remove space electronics from this category, change the coverage of semiconductor devices, delete coverage of armored coaxial cable as noted above, and clarify the coverage of the military electronic articles remaining. Related amendments contained in other **Federal Register** notices will create a new Category for Space, including electronics, and address coverage of the items currently in Category XI(c).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. In § 121.1, in "Category XI—Military and Space Electronics" paragraph (a) is revised to read as follows:

Category XI—Military and Space Electronics

(a) Electronic equipment not included in Category XII of the Munitions List which is specifically designed, modified or configured for military application. This equipment includes but is not limited to:

(1) Underwater sound equipment to include active and passive detection, identification, tracking, and weapons control equipment.

*(2) Underwater acoustic active and passive countermeasures and counter-countermeasures.

(3) Radar systems, with capabilities such as:

*(i) Search,

*(ii) Acquisition,

*(iii) Tracking,

*(iv) Moving target indication

*(v) Imaging radar systems, and

*(vi) Any ground air traffic control radar which is specifically designed or modified for military application.

*(4) Electronic Combat equipment, such as:

(i) Active and passive countermeasures,

(ii) Active and passive counter-countermeasures, and

(iii) Radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.

*(5) Command, control and communications systems to include radios (transceivers), navigation, and identification equipment.

(6) Computers specifically designed or developed for military application and any computer specifically modified for use with any defense article in any category of the U.S. Munitions List.

(7) Any experimental or developmental electronic equipment specifically designed or modified for military application or specifically designed or modified for use with military system.

(8) Semiconductor devices that are specifically designed or modified for military application.

* * * * *

3. In § 121.1, Category XI, paragraph (b) is removed in its entirety.

4. In § 121.1, Category XI, paragraph (c) is designated as new paragraph (b).

5. In § 121.1, Category XI, paragraph (d) has been designated as the new paragraph (a)(8) (above).

6. In § 121.1, Category XI, paragraph (e) is designated as new paragraph (c). Newly redesignated paragraph (c) is revised and paragraph (d) is added to read as follows:

* * * * *

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

(d) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (see § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91-17434 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Public Notice 1431]

Amendments to the International Traffic in Arms Regulations (ITAR), Category IV, Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: In identifying the overlap between the COCOM IL and the USML, space launch vehicles and ablative materials were identified. Both of these will be addressed in other **Federal Register** notices. This notice clarifies and rewrites items identified under ITAR § 121.5, "Apparatus and Devices Under Category IV (c)". The proposed rule would modify § 121.5 to specify coverage of transporters, cranes and specialized handling equipment, including robot and robot controllers, for articles (a) and (b) of this category. Thermal batteries are also covered under this section.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Terry L. Davis, Office of Defense Trade Controls, U.S. Department of State, SA-6, rm. 228, Washington, DC 20522-0602, fax #703-875-6647. Public comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, Office of Defense Trade Controls, Department of State (703 875-6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. munitions list all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990 regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

No items will be deleted from the USML and no items currently on the COCOM IL will be retained on the USML. The proposed rule that follows amends § 121.5 of the ITAR to specify coverage of thermal batteries, transporters, cranes and specialized handling equipment, including robots and robot controllers, for articles (a) and (b) of Category IV. The Department of State believes Category IV of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

The Department reviewed ILs 1465 (a) and (b), 1391, 1205, 1733, and 1763 and found two areas of overlap with articles related to spacecraft/launch vehicles and carbon-carbon metal matrix. A decision was made to transfer issues related to launch vehicles (IL 1465 (a)) to the space working group. The working group also transferred review of IL 1763 for carbon-carbon structures which are continuously reinforced in three or more directions to the working group handling coverage of auxiliary military equipment.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405-0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.5, "Apparatus and Devices Under Category IV(c)" should be revised to read as follows:

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following:

(a) Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, thermal batteries including but not limited to the following electrochemistry systems: Lithium aluminum/

iron disulfide, calcium/calcium chromate and calcium/potassium dichromate, hardened missile launching facilities, guided missile launchers and specialized handling equipment, including transporters, cranes and lifts designed to handle articles in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites;

(b) The equipment in this category includes: Robots, robot controllers, robot end-effectors having any of the following characteristics:

(1) Specially designed for military applications;

(2) Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g., incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839K (566 degrees C);

(3) Operable at altitudes exceeding 30,000 meters; or

(4) Specially designed or rated for operating in an electromagnetic pulse (EMP) environment.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Burĕau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91-17435 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Public Notice 1432]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise the coverage of articles under Category XX. This proposed rule is intended to reduce the burden on munitions exporters by eliminating the coverage of non-military submersible vessels.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA-6 room 228, Department of State Washington, DC 20520, or send by facsimile to (703) 875-6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State (703) 875-6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

The Department reviewed, in whole or in part, COCOM IL's 1417, 1418 and 1526. The following overlap with COCOM IL 1418 and Core Category 6 was found: Deep submergence vehicles capable of operating at depths exceeding 1,000 meters. The Department determines that such commercial vehicles may be removed from the USML. The Department of State believes Category XX of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized. The proposed rule that follows amends § 121.1, Category XX of the ITAR which defines submersible vessels, oceanographic and associated equipment controlled under the USML. This amendment would: (1) Remove from USML control commerical submersible vessel capable of operating down to, and exceeding 1,000 feet; (2) revise the language covering the articles under paragraph (a); (3) rewrite paragraph (b) to cover military swimmer delivery vehicles and delete the current language in order to remove non-military submersibles and their related technical data; (4) delete the language defining the articles covered by paragraph (c) and renumber paragraph (d) as paragraph (c); (5) add new paragraph (d) for related technical data and defense services which are currently covered under Categories XVIII and XIX. It is the intent of the Department of State to establish foreign policy controls for certain of these commercial submersible vehicles.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405-0013

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. In § 121.1, Category XX, is revised to read as follows:

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

*(a) Submersible vessels, manned or unmanned, tethered or untethered, designed or modified for military purposes, or powered by nuclear propulsion plants.

*(b) Swimmer delivery vehicles designed or modified for military purposes.

(c) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraph (a) and (b) of this category.

(d) Technical data (as defined in § 120.21) and defense service (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial note: This document was received by the Office of the Federal Register on July 18, 1991.

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22 CFR Part 121

[Public Notice 1433]

International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This notice is to advise exporters of defense articles and defense services that the Department of State reviewed Category IX (Military Training Equipment), and Category XVI (Nuclear Weapons Design and Test Equipment), of the United States Munitions List (USML), which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) and found no overlap. The ITAR implements section 38 of the Arms Export control Act (22 U.S.C. 2778). Also, it will serve to elicit any comments regarding the Department's review of these two categories.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Rose Marie H. Biancaniello, Chief, Arms Licensing Division, U.S. Department of State, Office of Defense Trade Controls, SA–6, Rm. 200, Washington, DC 20522–0602, fax # 703–875–6647.

FOR FURTHER INFORMATION CONTACT: Rose Marie H. Biancaniello, U.S. Department of State, Office of Defense Trade Controls, tel. 703 875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In carrying out this directive, the Departments of State, Commerce and Defense reviewed, in whole or in part, COCOM ILs 1746, 1522, 1529, 1531, 1533, 1537, 1565, and 1566 for military electronics and ILs 1091, 1099, 1312, 1370, 1371, 1391 and 1522 for nuclear weapons design and test equipment. In implementation of the President's directive of November 16, 1990, the Department of State identified no overlap of either military training equipment or nuclear weapons design and test equipment. The Department of State believes Categories IX and XVI of the USML do not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

It is the intent of the Department that this review would result in the continuing coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department to impose controls on dual-use items which are not controlled by the COCOM IL. Such dual-use items are generally enumerated in the Commodity Control List (15 CFR part 799 et seq.) as ending with any letter other than "A" (e.g., 6599G or 6598F). Public comments to clarify the proposed rule and the possible transfer or retention of COCOM IL items on the USML are welcome.

This notice involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

Dated: April 29, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17437 Filed 7–24–91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Co-002-88]

RIN 1545-AL41

Consolidated Return Regulations; Modification of Rules Relating to the Applicability of Other Provisions of Law in the Context of the Consolidated Return Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986, as amended, providing that section 304 will not apply to acquisitions of the stock of a corporation by one member of a consolidated group from another member and providing special restoration rules for deferred gain that results on an acquisition of the stock of a subsidiary member of a consolidated group by one member from another member.

DATES: Written comments and requests for a public hearing must be received by September 23, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention CC:CORP:T:R (CO–002–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Brendan O'Hara at telephone (202) 566–2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to § 1.1502–80 of Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986, as amended.

Section 1.1502–80 currently provides that section 304 applies for any consolidated return year. The regulations added by this document state that section 304 does not apply for

a consolidated return year to any acquisition of stock of a corporation in an intercompany transaction (defined in § 1.1502–13 (a)(1)).

Section 304 applies to certain acquisitions by one corporation of the stock of a related corporation. Under section 304, the seller treats the receipt of consideration for the stock either as a sale or exchange or as a distribution with respect to stock (which may be a dividend).

Under the consolidated return regulations, a dividend, including one arising under section 304, is eliminated from income. Section 1.1502–14(a). Absent section 304(b)(4), a dividend arising under section 304 may result in inappropriate adjustments to basis in the stock of the transferor and other corporations in the group. Section 304(b)(4) applies to prevent that result but could require complex basis and earnings and profits adjustments.

The Internal Revenue Service has concluded that the purposes of section 304(b)(4) can be realized, and the complex basis and earnings and profits adjustments avoided, if section 304 does not apply to an acquisition of stock by one member from another.

This document also contains proposed revisions to § 1.1502–13T to provide a rule parallel to that contained in § 1.1502–14T (c), relating to the restoration of deferred gain resulting from the distribution of stock of a subsidiary by one member of a consolidated group to another member.

Explanation of Provisions

The proposed regulations would amend § 1.1502–80 to provide that an acquisition of stock of a corporation by one member of a consolidated group from another member is not subject to section 304. These transfers of stock between members will be treated, to the extent provided in § 1.1502–13, as deferred intercompany transactions.

The proposed regulations also would amend § 1.1502–13T to add rules similar to those provided in § 1.1502–14T (c) (which restores deferred gain on distributed stock) that will apply to deferred gain arising in an intercompany transaction that is a sale or exchange of stock of a subsidiary.

If the stock of a controlled foreign corporation is sold or exchanged in an intercompany transaction, any gain on the sale or exchange will be deferred under § 1.1502–13, and section 1248 will apply as described in Rev. Rul. 87–96, 1987–2 C.B. 209. The Internal Revenue Service solicits comments on whether there are appropriate alternatives to the trigger rules described in Rev. Rul. 87–96.

This regulation is proposed to apply to an acquisition of stock of a corporation in an intercompany transaction occurring on or after July 24, 1991. The proposed regulation does not affect the application of section 304(b)(4) to section 304 transfers not addressed by the proposed regulation. Section 304(b)(4) continues to require appropriate adjustments to basis and earnings and profits in such cases.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (perferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time, place and date will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is John N. Geracimos of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Other personnel from the Service and the Treasury Department also participated in their development.

List of Subjects in 26 CFR 1.1502–12 through 1.1502–100

Income taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR chapter I, subchapter A, part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986.

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.1502–13T and 1.1502–80 also issued under 26 U.S.C. 1502.

Par. 2. In § 1.1502–13T, paragraph (o) is revised and paragraph (p) is added to read as follows:

§ 1.1502–13T Temporary regulations for certain intercompany transactions.

* * * * *

(o) *Restoration of deferred gain on stock of a member*—(1) *Restoration rule.* For purposes of this section and § 1.1502–13, gain deferred with respect to an acquisition of stock of a subsidiary in an intercompany transaction shall be taken into account—

(i) Upon a disposition (as defined in § 1.1502–19 (b) (2)) of the stock of the subsidiary in an amount equal to the amount that would have created or increased the excess loss account if the adjustment to basis (or excess loss account) of the stock of the subsidiary resulting from the acquisition had not occurred, or

(ii) Following a disposition (as defined in § 1.1502–19(b)(2)), to the extent distributions with respect to any stock owned by a member would exceed the basis of such stock if the adjustment to the basis of the stock resulting from the acquisition had not occurred.

(2) *Effective date.* This paragraph (o) applies to acquisitions of stock of a subsidiary in an intercompany transaction occurring on or after July 24, 1991.

(p) *References.* A reference in this part to § 1.1502–13 is treated as including a reference to this section.

Par. 3. Section 1.1502–80 is revised as follows:

§ 1.1502–80 Applicability of Other Provisions of Law.

(a) *In general.* The Code, or other law, shall be applicable to the group to the extent the regulations do not exclude its application. Thus, for example, in a transaction to which section 381 (a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply for any consolidated year. Section 304 applies except as provided in paragraph (b) of this section.

(b) *Non-applicability of section 304* Section 304 does not apply to any acquisition of stock of a corporation in

an intercompany transaction occurring on or after July 24, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 91-17605 Filed 7-24-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 117

[CCGD5-91-30]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental proposed rule for the operation of the Jordan drawbridge across the Southern Branch of the Elizabeth River, mile 2.8, in Chesapeake, Virginia, to allow commercial vessels carrying liquefied flammable gas passage through the bridge during the morning and evening rush hours. The supplemental proposed rule will include a requirement that commercial vessels with drafts of 22 feet or greater give a 6-hour advance notice for passage through the drawbridge during peak traffic hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on September 9, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On July 27, 1990, the Coast Guard published a proposed rule (55 FR 30723) to evaluate bridge opening retrictions during the morning and evening rush hours for the Jordan Bridge. The Commander, Fifth Coast Guard District also published the proposed rule as a public notice on August 2, 1990. Interested persons were given until September 10, 1990, to comment on the proposed rule that was published in the **Federal Register.** The comment period for the public notice also ended September 10, 1990. A supplemental public notice was issued on August 23, 1990, extending the comment period which ended October 10, 1990. This supplementary proposed rule exempts commercial vessels with drafts of 22 feet or greater from rush hour restrictions provided they give at least 6 hours advance notice for a bridge lift. Liquefied flammable gas (LFG) carriers are also being exempted from the rush hour restrictions and will be able to pass through the bridge anytime without providing a 6-hour advance notice. Imposition of the 6-hour advance notice requirement will provide motorists with an opportunity to learn about scheduled bridge openings by radio broadcasts and any other means established by the bridge owner.

Public comments are requested on the deep draft vessel exemption and liquefied flammable gas carrier provision and the 6-hour advance notice to ensure that this proposal is both reasonable and workable. Persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for the comments. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Drafting Information: The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica L. Lombardi, project attorney.

Discussion of Proposed Regulations: The International Federation of Professional and Technical Engineers, Local No. 10, requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River at mile 2.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The proposed change would have closed the Jordan Bridge to commercial, recreational, and public vessels, Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. A provision that allows the draw to open on signal at all times for vessels in distress was made a part of the proposal. The supplemental proposal includes the above with an additional provision which provides commercial deep draft vessels with 22 feet or greater access through the bridge during the morning and evening rush hours, provided they give a 6-hour advance notice of their arrival and liquefied flammable gas carriers access through the bridge anytime with no restrictions. The decision to allow deep draft vessels access through the Jordan Bridge during peak traffic hours was based on these vessels requiring high tide to transit upstream from the bridge to commercial marine terminals where the channel depths are reduced to as much as 27 feet. Due to the hazards involved in shipping flammable gas, it was decided to allow LFG vessels access through the bridge during anytime of the day.

As a result of the proposed rule that was published in the **Federal Register** (55 FR 30723) and the public notice issued on August 7, 1990, written comments were received from the maritime community and the monitoring public. The comments from motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on economic impact concerns, safety and deep-draft vessel navigation requirements. The Marine Safety Office, Hampton Roads, commented in their memorandum dated October 9, 1990, that liquefied flammable gas carriers should be allowed passage through the Jordan Bridge anytime with no restrictions due to the need of establishing safety zones and the risk and hazard involved in transporting a loaded LFG vessel.

In deciding the issues in cases, consideration was given to all views. However, it is felt that the need of motorists who use the bridge, the requirements of deep draft vessels needing to transit upstream at high tide and the safe movement of liquefied flammable gas vessels warrant special consideration. The Coast Guard feels that imposition of this proposed rule will not create an undue hardship on other commercial interests who do not use deep-draft vessels or LFG vessels in their operations, since these companies can plan most of their vessel transits around the restricted hours of operation. While they may be inconvenienced, they will not suffer the same hardships as

deep-draft commercial vessels or LFG vessels.

Federalism Assessment: This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation: These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact: This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, the Coast Guard proposed to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)

2. In Section 117.997 paragraph (a) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, in Chesapeake shall open on signal, except:

(1) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays.

(2) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays;

(i) Shall open for commercial vessels with a draft of 22 feel or more, provided 6 hours advance notice has been given to the Jordan Bridge Office at (804) 545-4695.

(ii) Shall open on signal at any time for a vessel in distress and commercial vessels carrying (LFG).

* * * * *

Dated: July 10, 1991.

H. B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91-17604 Filed 7-24-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50577D; FRL-3935-3]

Aromatic Diamines; Extension of Comment Period for Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for two aromatic diamines, P-86-501 and P-86-503. As initially published in the Federal Register of March 28, 1991 (55 FR 12880) and May 8, 1991 (56 FR 21351), the comments were to be received on or before June 26, 1991. One commenter, who is engaging in commercial activities with one of these substances, requested additional time to complete the generation of data to be included in its response. EPA is therefore extending the comment period in order to give all interested persons time to comment fully.

DATES: Written comments must be submitted to EPA by August 26, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Each comment must include the docket control number OPTS-50577D. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, telephone (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: This extension of time will allow one commenter who is engaged in commercial activities with P-86-503 to complete the development of data regarding the role of impurities in the toxicity of P-86-503 and to provide additional information on the structure activity correlations for aromatic diamines. The data will be used to support the comments concerning the proposed SNUR.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 17, 1991.

Joseph A. Carra,

Acting Director, Office of Toxic Substances.

[FR Doc. 91-17693 Filed 7-24-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7030]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Purusant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Flooding Source	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Arkansas	Paragould, city, Greene County.	Eight Mile Creek	Approximately 1.2 river miles downstream of U.S. Route 412.	None	*261
			Approximately 500 feet upstream of South Spring Grove Street.	None	*324
		Loggy Creek	Approximately 100 feet upstream of confluence with Eight Mile Creek.	*287	*285
			Approximately .7 mile upstream of confluence with Eight Mile Creek.	*288	*287
		Tributary No. 1	At confluence with Eight Mile Creek	None	*293
			At downstream side of Honeysuckle Road	None	*322
		Tributary No. 2	At confluence with Eight Mile Creek	None	*314
			Upstream side of Maxwell Street	None	*335
		Tributary No. 3	At confluence with Eight Mile Creek	None	*295
			Approximately 1.2 river miles upstream of Bo Gill Road.	None	*332
Maps available for inspection at the City Hall, 221 West Court Street, Paragould, Arkansas.					
Send comments to The Honorable Charles R. Partlow, Mayor of the City of Paragould, Greene County, 221 West Court Street, Paragould, Arkansas 72450.					
Connecticut	Ansonia, city, New Haven County.	Beaver Brook	Approximately 620 feet upstream of confluence with Naugatuck River.	None	*28
			At downstream side of Quillinan Reservoir Dam.	None	*127
		Whitemare Brook	At confluence with Beaver Brook	None	*96
			Approximately 1,000 feet upstream of Doyle Drive.	None	*398
Maps available for inspection at the Town Clerk's Office, 253 Main Street, Ansonia, Connecticut.					
Send comments to The Honorable Thomas P. Clifford, III, Mayor of the City of Ansonia, New Haven County, 253 Main Street, Ansonia, Connecticut 06401.					
Connecticut	Cromwell, town, Middlesex County.	Mattabassett River	Approximately 105 feet upstream of State Route 72.	*25	*26
			At upstream corporate limits	None	*30
Maps available for inspection at the Office of Public Works, 41 West Street, Cromwell, Connecticut.					
Send comments to Ms. Mary Amenta, First Selectman of the Town of Cromwell, Middlesex County, 41 West Street, Cromwell, Connecticut 06416-0189.					
Oklahoma	Tulsa County, unincorporated areas	Nichols Creek	At downstream corporate limits	None	*717
			At upstream corporate limits	None	*726
		Rolling Meadows Creek	At corporate limits	None	*727
			Approximately 1,625 feet upstream of corporate limits.	None	*739
Maps available for inspection at the County Engineer's Office, 500 South Denver, Tulsa, Oklahoma.					
Send comments to Mr. Lewis Harris, Chairman of the Tulsa County Board of Commissioners, 500 South Denver, Tulsa, Oklahoma 24103.					
Texas	Jasper, city, Jasper County.	Trotti Brook	At downstream corporate limits	None	*207

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Flooding Source	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 900 feet upstream of Munson Street on west side river.	None	*241

Maps available for inspection at the City Hall, 272 East Lamar, Jasper, Texas.

Send comments to The Honorable Frank Lindsey, Jr., Mayor of the City of Jasper, Jasper County, 272 East Lamar, P.O. Box 1170, Jasper, Texas 75951.

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administation.

[FR Doc. 91-17685 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 4 to its Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 4 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before September 16, 1991.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813 (808) 541-1974.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660; or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 4 proposes to continue for two and one-half years a moratorium on the issuance of permits for new entrants to the longline fishery for management unit species based in Hawaii. This moratorium was implemented by emergency rule (56 FR 14866, April 12, 1991) and was subsequently modified and extended (56 FR 28718, June 24, 1991). Amendment 4 makes no change in the permit eligibility criteria or permit transferability provisions of the emergency rule; however, it does contain the following new provisions: prospective permit applicants would be required to submit applications within 90 days of implementation of the amendment, a new information collection requirement would be established for limited entry permit applicants to clarify applicants eligibility criteria, and a procedure may be provided for future implementation by rulemaking of a requirement for longline vessels to obtain, install, and make operational, automatic vessel tracking system devices if the Council proposes and the Southwest Regional Director, NMFS, agrees that the system should be implemented. The emergency rule will expire on October 10, 1991, and the Council proposes that the effective date of the amendment coincide with the expiration of the emergency rule.

An environmental assessment was prepared in association with the emergency rule, and a draft regulatory impact review is incorporated in Amendment 4, which can be obtained from the Council (see **ADDRESSES**). Proposed regulations to implement Amendment 4 are scheduled to be filed at the Office of the Federal Register within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-17608 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 19, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• *Food and Nutrition Service*

7 CFR part 245—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Reporting/Recordkeeping Annually; Biennially; Triennial; Recordkeeping State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 5,218,285 responses; 819,839 hours.

Marian Stroud (703) 756-3607.

New Collection

• *Food and Nutrition Service*

Evaluation of the San Diego Food Stamp Cash-out Demonstration Evaluation of the Alabama Avenues to Self-Sufficiency Through Employment & Training Services (ASSETS) Demonstration. One time only.

Businesses or other for-profit; Small businesses or organizations; 555 responses; 278 hours.

Boyd Kowal (703) 756-3115.

• *Food and Nutrition Service*

7 CFR part 210—National School Lunch Program—Addendum 1 Recordkeeping; Monthly; Quarterly Annually; Biennially; State or local governments; Federal agencies or employees; Non-profit institutions; 375 responses; 5,633 hours.

Marian Stroud (703) 756-3607.

New Collection (Emergency)

• *Food Safety and Inspection Service*

Survey of Meat and Poultry Establishments Nutrition Label Information.

One time survey.

Businesses or other for-profit; Small businesses or organizations; 350 responses; 350 hours.

Roy Purdie, Jr. (202) 447-5372.

• *Food Safety and Inspection Service*

Regulations Governing Meat Inspection—Addendum 1 Recordkeeping; On occasion.

Businesses or other for-profit; Small businesses or organizations; 25 responses; 31 hours.

Roy Purdie, Jr. (202) 447-5372.

Extension

• *Agricultural Marketing Service*

Fresh Peaches Grown in Georgia Marketing Order No. 918.

On Occasion.

Farms; Businesses or other for-profit; Small businesses or organizations; 62 responses; 10 hours.

Thomas Tichenor (202) 475-5464.

• *Agricultural Marketing Service*

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon Except Malheur County—Marketing Agreement and Order No. 947.

Recordkeeping; On Occasion; Weekly; Monthly; Annually; every 6 years.

Farms; Businesses or other for-profit; 2,726 responses; 313 hours.

William N. Wise (503) 238-7500.

• *Agricultural Marketing Service*

Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925.

On occasion; Annually; Every six years.

Farms; Businesses or other for-profit; Small businesses or organizations; 836 responses; 40 hours.

Kenneth Johnson (202) 447-5331.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91-17634 Filed 7-24-91; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*)

CT-104—M & M Sales, Ledyard, Connecticut

DE-101—Dill's Auction Service, Wyoming, Delaware

GA-211—Thomson Stock & Auction Barn, Inc., Thomson, Georgia

MO-271—Lockwood Livestock Auction, Inc., Lockwood, Missouri

NC-162—Walking Acres Auction, Plymouth, North Carolina

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division,

Packers and Stockyards Administration, room 3408–South Building, United States Department of Agriculture, Washington, DC 20250, by August 6, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 19th day of July, 1991.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 91-17633 Filed 7-24-91; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Evaluate State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the following state coastal management programs (CMPs) and National Estuarine Research Reserve (NERR): The New Jersey CMP; the Alaska CMP; Commonwealth of the Northern Mariana Islands CMP; and the Waquoit Bay (Massachusetts) NERR.

Evaluations of coastal management programs and estuarine reserves will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management and the operation and management of NERRs. Evaluation of a CMP includes detailed findings regarding the extent to which a state has implemented and enforced the management program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of financial assistance awards funded under the CZMA. Evaluation of an estuarine reserve requires detailed findings on a state's implementation of the federally approved NERR management plan, and adherence to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting(s) is held as part of the site visit.

Notice is hereby given of the dates of the site visit for each evaluation, and the date, local time, and location of a public meeting(s) during the site visit:

(1) Alaska Coastal Management Program, September 11–20, 1991. The public meeting will be held Tuesday, September 17, 1991, 7 p.m., at the Loussac Public Library, 3600 Denali Street, Anchorage, Alaska.

(2) New Jersey Coastal Management Program, September 16–20, 1991. Public meetings will be held Tuesday, September 17, 1991, 7 p.m., at the State Office Building, 1510 Hooper Avenue, Toms River; and Thursday, September 19, 1991, at the Old Courthouse Building, Route 9, Cape May, New Jersey.

(3) Commonwealth of the Northern Mariana Islands Coastal Management Program, September 16–20, 1991. The public meeting will be held Wednesday, September 18, 1991, 6:30 p.m., at the Garapan Elementary School, Saipan.

(4) Waquoit Bay (Massachusetts) NERR, September 23–27, 1991. The public meeting will be held Tuesday, September 24, 1991, 7 p.m., at the Reserve, 149 Waquoit Highway, Waquoit, Massachusetts

The respective states will issue notice of the public meeting(s) in local newspapers at least 45 days prior to being held.

Copies of the state's most recent performance report, as well as OCRM's notification and supplemental request letter to the state, are available upon request from OCRM. Written comments from interested parties regarding each of these programs are encouraged at this time. Public comment will be accepted until seven days after the site visit. When the final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

FOR FURTHER INFORMATION OR TO DIRECT COMMENTS, CONTACT: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, N.W., Washington, DC 20235, (202) 673–5100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 19, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-17706 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-08-M

Evaluation Findings for State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Washington, South Carolina, and Hawaii coastal management programs. Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of coastal states with respect to coastal management. The states evaluated were found to be implementing and enforcing their approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2) (A)–(K), and adhering to the programmatic terms of their financial assistance awards. Satisfactory progress was made in performing award tasks, meeting special award conditions, and accomplishing significant improvement objectives. Copies of these findings may be obtained upon request from : Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673–5100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 19, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-17707 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-08-M

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on

Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP).

DATES: Written Comments will be accepted until August 21, 1991. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of hearings.

ADDRESSES: Send comments to: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, (302) 674–2331.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP is intended to reduce overfishing in the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act). The management unit is summer flounder in U.S. waters in the western Atlantic Ocean from the southern border of North Carolina northward to the U.S.-Canadian border and remains unchanged. The objectives of the FMP are:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur;
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass;
3. Improve the yield from the fishery;
4. Promote compatible management regulations between State and Federal jurisdictions;
5. Promote uniform and effective enforcement of regulations; and
6. Minimize regulations to achieve the management objectives stated above.

The FMP is a joint effort in planning with Atlantic States Marine Fisheries Commission (ASMFC), the States, and the Council.

Permits, Fees, and Reports

The requirement that commercial vessels and party and charter boats obtain annual permits would be continued. In addition, dealers must obtain annual permits. NMFS may charge for the permits as authorized by section 303(b) (1) of the Magnuson Act.

Persons may buy summer flounder at the point of landing only by a vessel that has a commercial moratorium permit issued pursuant to this FMP.

Commercial fishing vessel operators and dealers must submit weekly reports to NMFS. Charter and party boat operators must submit monthly reports to NMFS.

Moratorium on Entry of Additional Commercial Vessels and Party and Charter Boats

A vessel is eligible for a moratorium permit if it meets any of the following criteria: (1) The vessel landed and sold summer flounder or operated as a party or charter boat in the management unit for summer flounder between January 26, 1989, and January 26, 1990; or (2) the vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on January 26, 1990, and provided the vessel is participating in the summer flounder fishery prior to implementation of Amendment 2; or (3) the vessel is replacing a vessel of substantially similar harvesting capacity, which involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. "Substantially similar harvesting capacity" means the same gross registered tons (GRT) and vessel registered length for commercial vessels and, in addition to the two preceding criteria, the same passenger carrying capacity for party and charter boats.

During the moratorium period, vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same GRT and vessel registered length for commercial vessels and, in addition to the two preceding criteria, the same passenger carrying capacity for party and charter boats.

Operators of party or charter boats may obtain a party or charter boat moratorium permit if (1) they can document the boat operated as a party or charter boat (carried fishermen for a fee) from a port in the management unit (Maine through North Carolina) between January 26, 1989, and January 26, 1990; and (2) they attest (through a sworn statement) that the boat participated in the summer flounder fishery while operating as a party or charter boat.

The moratorium would terminate at the end of the fifth year following implementation unless extended by an amendment to the FMP. The moratorium may be replaced at any time by an amendment to the FMP establishing an alternative limited entry system.

The moratorium would apply to all party and charter boats, as well as to all commercial vessels. However, a party and charter boat permit is not a license to sell summer flounder as is a commercial permit.

Summer Flounder FMP Monitoring Committee.

The Summer Flounder Monitoring Committee (Committee) would be made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the ASMFC, the Northeast Regional Office of NMFS, the Northeast Fisheries Center, and the Southeast Fisheries Center. The Executive Director of the Councils, or his designee, would chair the Committee. The Committee would review annually the best data available including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock status, the most recent estimates of recruitment VPA results, target mortality levels, beneficial impacts of size/mesh regulations, as well as the level of noncompliance by fishermen of States and recommend to the Council and ASMFC Board commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits and seasonal closures) measures designed to assure that the target mortality level is not exceeded. The Committee would also review the gear used to catch summer flounder to determine whether gear, other than otter trawls, needs to be regulated to help assure attainment of the fishing mortality rate target and propose such regulations as appropriate. The Director, Northeast Region, NMFS (Regional Director) would publish this proposal for public comment in the **Federal Register.** Following the review period, the Regional Director would set the final quota and other management measure adjustments for the year.

Commerical Management Measures

Commercial quota. The annual commercial quota would be set at a range of between 0 and the maximum allowed by the adopted fishing mortality rate reduction strategy. All landings by any vessel that has a commercial moratorium permit (permit to sell) would count against the quota, whether the summer flounder are caught with an otter trawl, a scallop dredge, hook and line, or any other gear. If the vessel does not have a commercial moratorium permit, the fish may not be sold and the recreational rules on size, possession, and season apply. Quotas would be distributed to the States based on their share of commercial landings for the period 1980–1989 minus any landings in that State in excess of the previous year's quota. The annual commercial quota would be based on the

recommendations of the Committee to the Council and ASMFC Board. The Council and ASMFC Board would consider those recommendations and submit their recommendations to the Regional Director and the ASMFC. The Regional Director and the ASMFC would set the commercial quota annually. The commercial quota in 1992 would be a maximum of 11 million pounds assuming a minimum mesh size of 5.5 inches (13.97 cm), a minimum commercial fish size of 13 inches total length (TL) (33.2 cm), and a minimum recreational fish size of 14 inches TL.

It would be the responsibility of each State to assure that its quota is not exceeded. Each State must submit to the Council and Regional Director a plan setting forth the means by which the State will manage the quota, size limit, and mesh regulation. The Regional Director may prohibit taking summer flounder in the exclusive economic zone (EEZ) by fishermen of any State not in compliance with this FMP. The Regional Director would close the commercial fishery for summer flounder in the EEZ if the commercial fisheries for summer flounder have been closed in all coastal States.

Commercial fish size limitations. It would be illegal to possess summer flounder less than 13 inches TL (33.2 cm). It would be also illegal to possess parts of summer flounder less than 13 inches (33.2 cm) to the point of landing. The minimum fish size may be changed annually, if appropriate.

Minimum mesh requirement. Vessels using otter trawls may only fish with 5.5 inches (13.97 cm) minimum diamond mesh or 6 inches (15.24 cm) minimum square mesh, inside measure, applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net may take more than 100 pounds of summer flounder during the first year following FMP implementation. In the second and subsequent years, the minimum mesh size would apply throughout the entire net. Mesh would be allowed to be larger than the minimum size, but it could be no smaller than the minimum size. If the fish are landed in a State that has a larger minimum net mesh size, the State limit would prevail. States with minimum mesh regulations larger than those established in this FMP would be encouraged to maintain them.

Only nets of at least the legal size would be allowed on boats taking summer flounder. Any combination of mesh or liners that effectively decreases the mesh below the minimum size would be prohibited. Otter trawl vessels retaining more than 100 pounds of summer flounder may not have any net, or any piece of net not meeting the mesh size requirements, on board.

All summer flounder on vessels fishing with a mesh smaller than the legal minimum size must have any summer flounder on board boxed in a manner that facilitates enforcement personnel knowing whether the vessel has enough (100 pounds or more) summer flounder on board to meet the minimum mesh size cirterion. Any unboxed summer flounder on board a vessel fishing with a net smaller than the legal minimum would be considered a violation of this FMP. A box holds 100 pounds of summer flounder and is approximately 36 inches (91.44 cm) long, 15 inches (38.1 cm) wide, and 12 inches (30.48 cm) high (approximately 3.75 cubic feet).

The minimum net mesh size could be changed annually, if appropriate, following the Committee process. Based on recommendations of the Committee and Council, the Regional Director, by regulatory amendment, would implement regulations on gear other than otter trawls to achieve discards of summer flounder equivalent to the discards with otter trawls given the minimum net mesh requirements.

Recreational Fishery Measures

The recreational fishery throughout the management unit would be managed through a framework system that provides for an annual evaluation of possession limits, size limits, and seasonal closures. Clearly, within limits, there are various combinations of possession limits and seasons for a given size limit that would attain the fishing mortality rate target for a particular year. The length and timing of a seasonal closure are primary determinants in this consideration. Given the preceding and given a 14 inch (35.56 cm) minimum recreational fish size (whole fish or parts thereof), five optional possession limit and season combinations for the first year of FMP operation have been identified as follows:

(1) A 3-fish possession limit and no closed fishing season;

(2) A 5-fish possession limit and a fishing season from June 1 through December 31;

(3) A 6-fish possession limit and a fishing season from May 15 through September 30;

(4) A 7-fish possession limit and a fishing season from June 15 through December 31; or

(5) A 10-fish possession limit and a fishing season from July 1 through December 31.

The Council wishes comments on these optional ways of implementing this alternative.

On vessels with several passengers, the number of summer flounder contained on the vessel may not exceed the possession limit multiplied by the number of people aboard the vessel.

It is the responsibility of each State to assure that it implements measures compatible with the FMP. The Regional Director may prohibit landing summer flounder in the EEZ by recreational vessels (party, charter, and private boats) of any State not in compliance with this FMP. If the inaction of one or more States leads the Regional Director to conclude that the FMP will be adversely affected, he may close the entire EEZ to summer flounder fishing.

All hearings will begin at 7 p.m., except the New York hearings, which will begin at 7:30 p.m. The hearings will be tape recorded with tapes filed as the official transcript of the hearing:

The public hearings are scheduled as follows:

1. Monday, July 29, 1991—Kingsborough Community College, 2001 Oriental Blvd., Brooklyn, New York;
2. Monday, July 29, 1991—Quality Inn Lake Wright, 6280 Northampton Blvd., Norfolk, Virginia.
3. Tuesday, July 30, 1991—Holiday Inn Riverhead, Grand Ballroom Exit 72, LI Expressway & Rt. 25, Riverhead, LI, New York;
4. Tuesday, July 30, 1991—Elizabethan Inn, Raleigh Room, Routes 64 & 264, Manteo, North Carolina;
5. Wednesday, July 31, 1991—Seaport Inn, Route 6, Fairhaven, Massachusetts;
6. Wednesday, July 31, 1991—Carteret Comm. College, Joselyn Aud., 3505 Arendell Street, Morehead City, North Carolina;
7. Thursday, August 1, 1991—Dutch Inn, Great Island Road, Galilee, Rhode Island;
8. Thursday, August 1, 1991—Holiday Inn, Delaware Room, Rt. 11, Box 226, Salisbury, Maryland;
9. Tuesday, August 6, 1991—Cape May Extension Office, Dennisville Road, Cape May Court House, New Jersey; and
10. Tuesday, August, 1991—Wall Township Fire Hall, West Atlantic Avenue at Rt. 34, Wall, New Jersey.

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management; National Marine Fisheries Service.

[FR Doc. 91-17607 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Health and Human Services

7–279,584 (5,010,080) Use of Heterocyclic Amides to Inhibit Tumor Metastasis.
7–292,814 (4,994,370 Improved DNA Amplification Technique.
7–358,073 (5,021,450) New Class of Compounds Having a Variable Spectrum of Activities for Capsaicin-Like Responses, Compositions and Uses Thereof.
7–358,517 Human Cell Lines of Epithelial Lung Adenocarcinoma Origin, Human Proteins and Methods.
7–620,413 A Model for Designing Drugs Targeted Against HIV–1 Protease.
7–628,002 Derivatized Tris-Catechol Chelating Agents (for preparing radioactive conjugates for cancer diagnosis or therapy).
7–636,712 Immortalized Human Cell Lines (bronchial and mesothelial epithelial cells).
7–637,145 Therapeutic Application of an Anti-Invasion Compound (use of amino-1,2,3 triazoles for treating solid metastatic tumors).
7–638,512 A Method for In Vivo Recombination and Mutagenesis (using PCR).
7–642,971 Hepatic Growth Factor Receptor is the Met Proto-Oncogene.
7–654,971 Muscarinic Receptor Fusion Proteins and Subtype-Specific Antisera.
7–669,023 Increasing The Therapeutic Efficiency of Macrophage-Targeted Therapeutic Agents By Up-Regulating the Mannose Lectin on Macrophages (for Gaucher's disease).
7–670,605 A Simple Rapid and Reliable Method for Detecting Toxigenic Clostridium Difficile With Specificity (using PCR).
7–670,791 Expression of Influenza A and B Nucleoprotein [Antigens] in Baculovirus.
7–674,852 A Vaccine Against Hepatitis A.
7–678,828 Hepatitis A Virus Vaccine.
7–683,434 Recombinant HIV–1 Integrase DNA and Monoclonal Antibodies.
7–683,967 Method For Screening An Agent For Its Ability To Prevent Cell Transformation.
7–685,072 Method for Evaluating Contributions of Extrinsic and Intrinsic Coagulation Factors to a Factor Xa Assay.
7–685,408 Novel Reference Influenza Viruses and Antiviral Drug Susceptibility Methods (antiviral drug screening).
7–686,827 Method For Detecting Aqueous Flare and CMF Retinitis In HIV Patients.
7–687,526 Identification of a new Human Ehrlichia Species From A Patient Suffering From Ehrlichiosis.
7–691,191 Isolation of Macrophage Migration Inhibition Factor From Ocular Lens And DNA Which Encodes The Factor.
7–691,728 Novel Baculovirus Expression Vectors and Recombinant Antigens for Detecting Type-Specific Antibodies to Herpes Simplex Virus.
7–691,857 Rabies Virus N Protein Prepared From Baculovirus Expression System.
7–691,895 Dust Emissions Control Mechanism for Hand Sanders.
7–707,136 Oncoimmunins.

Department of Agriculture

7–192,084 (5,021,343) Method for Producing Trichothecenes.
7–212,641 (5,023,182) Novel Virus Composition to Protect Agricultural Commodities from Insects.
7–325,184 (5,021,076) Enhancement of Nitrogen Fixation with Bradyhizobium Japonicm Mutants.
7–450,192 (5,019,403) Coatings for Substrates Inclusing High Moisture Edible Substrates.
7–579,896 Recombinant ACC Synthase.
7–677,716 Method to Decrease Cortisol Secretion by Feeding Melengesterol Acetate.
7–695,167 Species-Specific DNA–DNA Hybridization Probe Prepared Using Chromosome Size DNA.
7–697,549 Sequential Oxidative and Reductive Bleaching and Dyeing in a Multicomponent Single Liquor System.
7–705,417 Anionically Dyeable Smooth-Dry Crosslinked Cellulosic Material Created by Treatment of Cellulose with Trifunctional or Tetrafunctional Quaternary Ammonium Compounds.

[FR Doc. 91–17614 Filed 7–24–91; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

July 22, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51754, published on December 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on July 29, 1991, you are directed to amend further the directive dated December 4, 1990 to decrease the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	376,234 kilograms.
625/626/627/628/629.	13,080,776 square meters.
Levels in Group II	
435	32,235 dozen.
444	50,247 numbers.
632	1,328,976 dozen pairs.
633/634/635	1,326,737 dozen of which not more than 150,450 dozen shall be in Category 633 and not more than 558,178 dozen shall be in Category 635.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-17661 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Chemical Stockpile Disposal Program

AGENCY: Department of the Army, DOD.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: This announces the availability of the Record of Decision regarding the destruction of the stockpile of lethal unitary chemical agents and munitions stored at the Anniston Army Depot (ANAD), Alabama. The Army has decided to construct and operate a full-scale disposal facility at ANAD using the Johnston Atoll Chemical Agent Disposal System (JACADS) reverse assembly and incineration technology.

SUPPLEMENTARY INFORMATION: Title 14, part B, section 1412 of Public Law 99-145 and subsequent legislation requires destruction of the U.S. stockpile of lethal unitary chemical agents and munitions by April 1997. To implement the Congressional directive, the Department of Army conducted a programmatic environmental review consistent with the National Environmental Policy Act and governing Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508). A Final Programmatic Environmental Impact Statement (FPEIS) was issued in January 1988.

The FPEIS addressed five alternatives: (1) Continued storage of the stocks at their present locations; (2) on-site disposal of the stocks at their present storage locations; (3) relocation of the stocks to regional disposal centers at Anniston Army Depot, Alabama, and Tooele Army Depot (TEAD), Utah, for destruction; (4) relocation of the stocks to a national disposal center at TEAD for destruction; and (5) relocation of the inventories at some specific sites to alternative sites, with the remainder destroyed at their present storage locations. The FPEIS identified the on-site disposal option as the environmentally preferred alternative and concluded that the stockpile of chemical agents and munitions stored in the continental U.S. can be destryoed in a safe, environmentally acceptable manner.

In its programmatic Record of Decision (53 FR 5816, February 26, 1988), the Department of Army selected on-site incineration as its preferred alternative. In making that decision, the Army noted that environmental impacts, including the hazards and risk analyses presented in the FPEIS, were a contributing but not determining factor in the decision. Other factors considered included the feasibility and effectiveness of emergency response measures, vulnerability to terrorism and sabotage, and logistical complexity. In addition, incineration was endorsed by the National Research Council as the best and safest means of destroying these lethal chemical agents.

Subsequent to issuance of the FPEIS and the attendant Record of Decision, the Army gave further consideration to the validity of the programmatic decision for on-site disposal of the ANAD stockpile in a Phase I Environmental Report, issued in February 1990. The report used recently collected site-specific data to examine the suitability of on-site disposal of agents and munitions stored at ANAD. The report also examined resource data for the ANAD vicinity to determine whether significant resources are present that could affect implementation of on-site disposal at ANAD. No new or unique site-specific information was found that would change or contradict the conclusions of the FPEIS for ANAD.

On April 13, 1990, the findings and conclusions of the Phase I Environmental Report and an independent review (which concurred with the findings of the report) were certified to Congress. After the submission of certification, the Army initiated the preparation of the Final Environmental Impact Statement (EIS) for the Disposal of Chemical Agents and Munitions Stored at ANAD. As presented in the Final EIS, the Department of Army's proposed action is to implement the programmatic decision of on-site destruction of the lethal unitary chemical agents and munitions stockpiled at the ANAD. This action entails construction and operation of a destruction facility based on the JACADS incineration technology and experience. The alternatives considered in the site-specific EIS, based on the information and conclusions presented in the Programmatic EIS and the Phase I reports, included on-site locations for the destruction facility and the "no action" alternative of indefinite storage of the ANAD stockpile. Because of the Congressional directive to destroy the stockpile and hazards associated with

continued storage, the "no action" alternative is not a viable long-term option.

The ROD selects the site located at the north central portion of the depot, near the northwest corner of the existing chemical munitions storage area for the construction of the chemical disposal facility at ANAD. This site was both the Army preferred site and the environmentally preferred alternative because it best meets the criteria of safety to the off-post communities, minimizes the transportation distance from the storage area, minimizes exposure to potential earthquakes, and minimizes interferences with other activities at the Depot. Construction of the disposal facility is expected in late 1992 or early 1993 and construction will take about 31 months to complete.

The Army will adopt all practicable means to avoid or minimize environmental harm from the alternative selected. Measures to mitigate both the likelihood and consequence of severe accidents will be incorporated in the facility design and operating procedures as delineated in the Final EIS for Anniston. A major program is also under way to enhance emergency preparedeness at ANAD and contiguous areas. The program is intended to mitigate the human health impacts of catastrophic accidents from both storage and disposal operations.

Before operations begin, a four-month design and procurement verification period will be included in the program to incorporate changes resulting from the JACADS program. Prior to toxic operations, there will be a period of preoperational checkout, training, and integrated systems operation under mock conditions with simulant munitions (without agent). All state and federal regulations will be complied with before and during disposal operations. Once toxic agent operations are initiated, destruction of the stockpile is expected to take approximately 38 months based on a 24-hour day, five-day per week schedule.

CONCLUSION: The Department of Army has weighed the costs, benefits, schedule, and environmental impacts in its decision to destroy the stockpile of lethal unitary chemical agents and munitions stored at ANAD. Through this analysis, the Department of Army has selected construction and operation of a JACADS-type reverse assembly and incineration facility at ANAD. This alternative is the best choice from a public health and environmental perspective.

Interested individuals may obtain copies of the Record of Decision by contacting the Program Manager for Chemical Demilitarization, Attn: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 91–17664 Filed 7–24–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested parties are invited to submit comments on or before August 26, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: July 19, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Certification of Projects Costs for College Facilities Programs.

Frequency: One time only.

Affected Public: Non-profit institutions.

Reporting Burden:

Reponses: 50.

Burden Hours: 50.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Institutions of higher education that have participated under the College Facilities Program are required to submit information on the costs incurred during project construction.

[FR Doc. 91–17635 Filed 7–24–91; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.004C]

Desegregation of Public Education Program for State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To enable State educational agencies (SEAs) to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation of public schools.

Eligible Applicants: SEAs that either (1) do not have an award under the Desegregation of Public Education Program; or (2) have a Desegregation of Public Education Program award with a one-year project period that expires on June 30, 1992 are eligible under this announcement. SEAs that are eligible for noncompeting continuation awards will receive separate information at a later date about procedures for submitting applications for continuation awards.

Deadline for Transmittal of Applications: October 30, 1991.

Deadline for Intergovernmental Review: December 29, 1991.

Applications Available: August 30, 1991.

Available Funds: The Administration has requested $14,133,000 for grants to SEAs, of which approximately $812,000 is expected to be available for new awards. However, the actual level of funding is contingent upon final Congressional action. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications.

Estimated Range of Awards: $80,000 to $55,000.

Estimated Average Size of Awards: $270,667.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 2 years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271; and (b) The regulations for this program in 34 CFR parts 270 and 271.

For Applications or Information Contact: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., room 2059, Washington, DC 20202-6246. Telephone: (202) 401-0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 42 U.S.C. 2000c-2000c-2, 2000c-5.

Dated: July 18, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-17709 Filed 7-24-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Environmental Restoration and Waste Management

Draft Request for Proposal; Invitation for Public Comment

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Request for comments on draft Request for Proposal (RFP) number DE-RPO6-910R21972, Environmental Restoration Management Contractor (ERMC) at the Feed Materials Production Center (FMPC).

SUMMARY: The U.S. Department of Energy (DOE) invites comments concerning this draft RFP.

Note: Proposals should not be submitted in response to this draft RFP but to the final RFP which will be issued at a later date.

Any comments regarding the ERMC concept, the practicality of this draft RFP or contract provisions, and suggestions or improvements and their application to the work at Fernald will be considered in the preparation of the final RFP. The Department is also interested in comments and ideas on the nature and overall structure of the relationship between the DOE and the ERMC that should be established through any contract awarded from such an RFP.

In implementing a new contracting strategy, the DOE is seeking unique and innovative approaches to the management, technical implementation, and cost control of environmental restoration (ER) activities, including new performance-based incentives to reward the contractor. The ERMC will be the prime contractor at the FMPC, responsible for management of the cleanup of the FMPC and the RMI Titanium Company Extrusion Plant (RMI) site at Ashtabula, Ohio. The ERMC's principal responsibility will be ER assessment and remediation. It will also be responsible for decontamination and decommissioning activities, and base program activities such as waste management, safe shutdown, environmental monitoring, and utilities operation.

The Statement of Work (SOW) is set forth in Section J of the draft RFP. The SOW envisions the ERMC as the overall Manager of the ER program. The ERMC will have the option of performing the Remedial Investigations/Feasibility Studies and/or base program activities, either with its own forces or by subcontracting.

Notification of the intention to release the draft RFP for comment was published in the Commerce Business Daily (CBD) on April 30, 1991 and May 8, 1991. Those who have responded to the CBD announcements will not need to send another request.

FOR FURTHER INFORMATION CONTACT: Persons interested in providing comments may obtain a copy of the draft RFP by writing to: U.S. Department of Energy, DOE Field Office, Oak Ridge, Attn: Barbara J. Jackson, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37831-8758.

DATES: Comments must be received not later than August 30, 1991. Comments received after this date may not be considered.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 91-17716 Filed 7-24-91; 8:45 am]

BILLING CODE 6450-01-M

Finding of No Significant Impact (FONSI); Radioisotope Heat Source Fuel Processing and Fabrication

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: DOE has prepared an Environmental Assessment (EA), DOE/EA-0534, for radioisotope heat source fuel processing and fabrication involving existing facilities at the Savannah River Site (SRS) near Aiken, South Carolina and the Los Alamos National Laboratory (LANL) near Los Alamos, New Mexico. The proposed action is needed to provide Radioisotope Thermoelectric Generators (RTG) to support the National Aeronautics and Space Administration's (NASA) CRAF and Cassini Missions. Based on the analysis in the EA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.* Therefore, an Environmental Impact Statement is not required.

FOR FURTHER INFORMATION CONTACT: Single copies of the EA (DOE/EA-0534) are available from: Mr. Edward Mastal, U.S. Department of Energy, Office of Special Applications, Mail Stop NE-53, Washington, DC 20545, phone: (301) 353-4362.

For further information on the NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, Washington, DC 20585, phone: (202) 586-4600.

PROPOSED ACTION: The proposed action is for the U.S. Department of Energy (DOE) to operate existing plutonium-238 (Pu-238) processing facilities at the Savannah River Site (SRS), and fabricate a limited quantity of Pu-238 heat source units at an existing Pu-238 research and development facility at the Los Alamos National Laboratory (LANL). The proposed action includes facilities used in the Pu-238 fuel

processing and fabrication from the point at which existing inventories of Pu-238 oxide can be dissolved and re-blended at SRS to the point at which the fabricated Pu-238 fuels forms are shipped from LANL for final integration into end-use system components. The purpose of the proposed action is to enable DOE to provide the required supplies of Pu-238 fuel in a fabricated form to support NASA's near-term CRAF/Cassini missions. The proposed action would be accomplished in two stages, involving specific facilities as follows:

• *Stage I:* Conducted within the existing SRS processing facilities in the 221-HB-Line located in the H-Area Canyon Building, including the Scrap Recovery Facility and the Plutonium Oxide Facility. The facilities would be used to re-blend existing inventories of Pu-238 into a uniform blend suitable for use.

• *Stage II:* Conducted within the existing LANL Plutonium Handling Facility Building 4 (PF-4) at Technical Area 55 (TA-55). This facility would be used to fabricate Pu-238 oxide into iridium-clad capsules used in the General Purpose Heat Source (GPHS) Radioisotope Thermoelectric Generator (RTG) and into Light-Weight Radioisotope Heater Units (LWRHUs). This work would be undertaken during the time period of approximately 1991 through 1994 in support of the next two NASA near-term missions. The required facility space, most of the equipment, and personnel are currently available for Pu-238 fabrication. Comparable work has been previously performed in this facility.

ALTERNATIVES: Three alternatives are identified in the EA as follows:

• *Fabrication Alternatives:* An alternative to using the PF-4 facility at LANL to satisfy Pu-238 fabrication needs is to use the Plutonium Fuel Form (PuFF) Facility located in F-Area Building 235 at SRS. However, the PuFF Facility needs refurbishment that would require at least several years to complete, and could not meet the near-term requirements to satisfy Pu-238 application needs.

• *Construct New Building and Facility:* An alternative that could potentially meet the need for Pu-238 fabrication and achieve the purpose of DOE's proposed action is the construction of a new building and facilities to replace, rather than refurbish, the existing Building 235-F and the PuFF facility that it houses. However, this could not be accomplished within the time frame needed to satisfy Pu-238 application requirements.

• *No Action:* In accordance with NEPA, the "no action" alternative is included to provide a baseline condition from which to evaluate the potential environmental impact of the proposed action. This alternative, by definition, would consist of DOE taking no action to operate the subject facilities to produce the Pu-238 fuel forms. It would result in a failure to meet both the purpose of and the need for the proposed action.

• *Other Alternatives:* None of the alternatives considered to the proposed action would provide Pu-238 in sufficient quantity and fabricated form on a schedule that would allow DOE to satisfy Pu-238 requirements for near-term NASA space missions. The action proposed in this EA will enable NASA to consider all alternatives for the CRAF/Cassini missions.

ENVIRONMENTAL IMPACTS: The EA analyzes for both RTG fuel processing (Stage I) at SRS, and fabrication (Stage II) at LANL, the environmental impacts on land use, on-site population, cultural and historical resources, transportation, air quality, water quality, radiation doses to the public and workers, vegetation, wildlife, and floodplains and wetlands. Both routine activities and potential accidents are considered. The impacts are compared to overall activities at SRS and LANL.

The proposed action is not expected to result in any land use impacts at SRS or LANL, as all required buildings and structures exist. Most of the personnel required for operations are currently employed at SRS and LANL. Thus, socioeconomic and traffic impacts are expected to be small. The proposed action is not expected to affect any sensitive areas such as floodplains, wetlands, habitats of State or Federally listed threatened or endangered species, sole-source aquifers, or cultural resources. Waste management and radiological impacts associated with the proposed actions at SRS and LANL are described below:

• *Stage I:* The projected annual volumes of transuranic (TRU) waste and low-level radioactive waste (LLW) to be generated at SRS resulting from facility operations as part of the proposed action represent less than 8 and 1.3 percent, respectively, of the TRU waste and LLW generated at SRS on an annual (1988) basis. Existing TRU and LLW waste management facilities at SRS were designed to handle wastes generated by all SRS facilities, including the operation of the HB-Line; therefore, there will be no additional burden on existing waste handling capacity by implementation of the proposed action at SRS. Any hazardous or radioactive-mixed wastes associated with operations will be handled in accordance with Resource Conservation and Recovery Act (RCRA) guidelines.

Radiological doses to the offsite population for all SRS 1988 atmospheric releases have been estimated to be 21 person-rem and 4.6E-04 rem to the offsite maximally-exposed individual. The proposed action will result in a conservatively estimated offsite does increase of less than 1 percent. The overall radiological doses to the offsite population would be well within those specified by DOE Orders (less than 0.1 rem) and EPA Clean Air Act and Safe Drinking Water Act standards (less than 0.01 rem and 0.004 rem, respectively). For comparison, the doses from natural background radiation and all other non-SRS sources to the offsite population living within an 80 kilometer radius of SRS are 165,000 person-rem per year, and the doses to an individual living in the SRS regional area is 0.3 rem per year.

Exposure of operating personnel to radiation during normal operations will be monitored as part of the SRS health physics program. Normal operating procedures require that operating personnel wear dosimeters, which measure the radiation exposure received while on the SRS. Individual worker exposures would be limited to, and maintained below, 3 rem per year.

All nonreactor nuclear facilities associated with the processing of Pu-238 at SRS have been analyzed to identify potential accidents and abnormal events, and their consequences to SRS personnel and the public. Abnormal events include those events, such as certain maintenance and changeout operations, that do not occur on a continuous basis during normal operations. The potential for radioactivity releases due to abnormal events at the Scrap Recovery Facility involve low-energy events. Process equipment leaks, transfer errors, overflows, and spills were found to be the major contributors to risk, with a combined expected frequency of 0.2.1 per year. These accidents could result in a dose to the maximally-exposed individual of 7.6E-03 rem. The doses to the onsite population would be 17 person-rem and to the offsite population, 62 person-rem. For the Plutonium Oxide Facility, a low-energy accident with a failure of both HEPA filters was determined to be the largest contributor to risk, with an expected frequency of 6.0E-02 per year. This scenario could

result in a dose to the maximally-exposed individual of 2.7E–04 rem. The doses to the onsite population would be 0.6 person-rem and to the offsite population, 2.1 person-rem.

• *Stage II:* Radiological liquid wastes produced from the proposed action at LANL would be treated at the Radioactive Liquid Waste Treatment Plant. The project would increase the liquid flow into the facility by less than 0.0001 percent and the plutonium by about 3 percent. The discharges remain onsite and would not contaminate offsite waters or the deep potable aquifer. The proposed action would increase the amount of TRU waste generated at LANL by approximately 4 percent. Any hazardous or radioactive-mixed waste associated with operations will be handled in accordance with RCRA guidelines.

Radiological dose to the offsite population living within 80-kilometers of LANL from all 1989 LANL releases has been estimated to be 3.1 person-rem and the dose to the offsite individual nearest the location of the proposed action is 0.0001 rem. The proposed action would result in an estimated offsite dose increase of less than 0.00002 percent. The overall radiological doses to this offsite population is maintained well within those specified by DOE Orders (less than 0.1 rem) and EPA Clean Air Act and Safe Drinking Water Act standards (less than 0.01 rem and 0.004 rem, respectively). For comparison, the doses from natural background radiation and all other non-LANL sources to the offsite population living within 80 kilometers of LANL is 68,200 person-rem per year and the doses to an individual living within the region is 0.34 rem per year. Personnel working with this project in PF–4 will be included in the health physics monitoring program maintained at TA–55. Although all work will be performed in extensively shielded glove boxes, some of the energetic decay products penetrate the shielding and cause some exposure to the workers. Individual worker exposures are limited to and maintained below 3 rem per year.

For the proposed action, accident scenarios that could cause radioactive material to be released into the work area in PF–4 and the environment are evaluated that describe a high-probability, low-consequence event (airborne release from contaminated equipment) and a low-probability, high-consequence event (fire that breaches the glove box line) to represent the range of credible accidents. During routine maintenance of contaminated equipment, glove box window change, or waste bag-out, a handling error could occur and plutonium-238 could be released into the PF–4 laboratory. The maintenance-related accidental release could cause an individual who happened to be at the Pajarito Road site boundary, 200 meters away, to receive a dose of 2.3E–11. The dose to the population living within 80 kilometers of LANL would be 2.8E–07 person-rem. The fire breach scenario considers a fire in one of the glove boxes. The probability of this type of accident is estimated to be 1E–04 to 1E–06 per year; such an accident has never occurred in PF–4. When conservative assumptions are used, the fire-related release could cause an individual at the site boundary to receive a dose of 0.37 rem. The dose to the population living within 80 kilometers of LANL would be 4.7 person-rem.

The protection of the public and transport workers from hazards associated with the shipment of the Pu–238 is achieved by a combination of limitations on the contents, the package design, and the method of shipment. All of these aspects are regulated at the Federal level by the Department of Transportation (DOT). In addition, certain aspects, such as limitations on gross weight of trucks, are regulated by the States. The certified packages are designed to remain leak-tight under normal conditions of transport. The packages are also designed to provide sufficient radiation shielding under normal conditions. All shipments will be made according to DOT standards which limit the dose rate at the surface of the transportation container to 0.2 rem per hour.

However, the actual dose rates to personnel in any normally occupied position in the transport vehicle will not exceed 0.002 rem per hour. The certified packages are designed to minimize any leakage of material in accident situations. Prototypes of certified shipping packages must survive an extensive postulated accident test sequence consisting of impact, puncture, and fire testing, as well as an immersion test in water. Packages designed to carry Pu–238 must be shown to have a post-accident leak-rate not exceeding 0.003 Curies per week. In addition, the packages are designed to maintain adequate radiation shielding under accident conditions.

DETERMINATION: Based on the analysis in the EA, the proposed RTG processing at SRS and fabrication of fueled source units at LANL as RTG components and LWRHUs do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, U.S.C. 4321 et seq.

Therefore, an Environmental Impact Statement is not required.

Issued this 19th day of July, 1991.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91–17717 Filed 7–24–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP88–312–008]

Natural Gas Pipeline Company of America; Sale of Natural Gas

July 12, 1991.

Take notice that on May 2, 1991, Natural Gas Pipeline Company of America (Natural), 701 East Lombard Street, Lombard, Illinois, 60148–5072, submitted the following information regarding the sale of natural gas to be made to an affiliate under Natural's Rate Schedule IS–1, pursuant to the authorization granted by order in Docket Nos. CP88–312–000 and CP88–312–002, issued December 20, 1988, and June 7, 1989, respectively (45 FERC 61,465 and 47 FERC 61,334).

(1) Name of Buyer: MidCon Marketing Corporation (MCM).

(2) Location of Buyer: Lombard, Illinois.

(3) Affiliation between Natural and Buyer: Natural is a subsidiary of MidCon Corp (MidCon). Both MidCon and MCM are subsidiaries of Occidental Petroleum Corporation.

(4) Term of Sale: June 1, 1991, through 1, 1991, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities: Daily Quantity: 50,000 MMBtu. Estimated Total: 18,250,000 MMBtu.

(6) Maximum sales rate: $2.0975 per MMBtu. Minimum sales rate: $1.5179 per MMBtu. Rate to be charged during billing period: $1.60 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the orders of December 20, 1988, and June 7, 1989. If no protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Natural may sell gas for 120 from the date of commencement of service or until a

termination order is ordered, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17625 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-33-005 and RP91-35-002]

ANR Pipeline Co.; Report of Refunds

July 19, 1991.

Take notice that the ANR Pipeline Company (ANR) on June 18, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds summarizing the refund made to gas sales customers on May 24, 1991, pursuant to a May 10, 1991, Commission order approving ANR's Stipulation and Agreement dated February 12, 1991, and a settlement issued March 1, 1991, in Docket Nos. RP91-33-000 and RP91-35-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17629 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 19, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 11, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1991.

Substitute First Revised Sub Eleventh Revised Sheet No. 26
Substitute First Revised Sub Eleventh Revised Sheet No. 26A
Substitute First Revised Sub Eleventh Revised Sheet No. 26B

Columbia states that the instant filing is being made to correct certain minor clerical errors on the above listed tariff sheets, and that the total effective rates do not change as a result of the corrections.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17630 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-001]

Columbia Gulf Transmission Co.; Compliance Filing

July 19, 1991.

Take notice that on July 12, 1991, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing copies of workpapers which show the allocation factors and how Columbia Gulf allocates its total system costs to each zone, and the detail of each zone's cost of service, in compliance with Ordering Paragraph (J) of the Commission's suspension order issued June 28, 1991.

Copies of this filing were served upon Columbia Gulf's jurisdictional customers, interested State Commissioners, and upon each of the parties set forth on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17626 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01

Florida Gas Transmission Co.; Petition for Limited Waiver

July 19, 1991.

Take notice that on July 15, 1991, Florida Gas Transmission Company (FGT) filed a petition for a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations. FGT requests that the Commission grant FGT a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations for a one-year period beyond October 15, 1991, the expiration date of the existing waiver granted by letter order dated October 10, 1990.

FGT states that such waiver would permit FGT to include in its purchased gas adjustment filings the flow through of costs of liquid gas and liquified natural gas (LNG) that FGT may purchase to maintain competitively-priced service on the FGT system.

FGT states that granting the requested waiver will enable its customers to benefit from the lower weighted average cost of gas and the accompanying benefits of maintaining a high load profile on the FGT system. FGT states that granting the requested waiver is in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17631 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 19, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 15, 1991, resubmitted for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Thirtieth revised sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1991. Kentucky West states that the revised tariff sheet reflects a decrease from Kentucky West's last scheduled purchased gas adjustment filing of $.2835 in the average cost of purchased gas, resulting in a Weighted Average Cost of Gas of $1.0691, and a Deferred Gas Cost Adjustment of ($.0443) in accordance with the Federal Energy Regulatory Commission's regulations.

Kentucky West states that effective August 1, 1991, pursuant to its obligations under various gas purchase contracts, it has specified a total price that it will pay of $1.0501 per dth, inclusive of all taxes and any other production-related cost add-ons.

Kentucky West requests that the Commission waive its 30-day notice requirement, pursuant to § 154.51 of the Commission's regulations, to allow this resubmitted filing to become effective August 1, 1991, as originally proposed.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17632 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-198-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 19, 1991.

Take notice that United Gas Pipe Line Company (United) on July 16, 1991 tendered for filing as part of its Second Revised Volume No. 1 FERC Gas Tariff, fourteen copies each of the following tariff sheets which United proposes to be effective on:

Tariff Sheet and Effective Date

Third Revised Sheet No. 4J—01-01-88
Second Revised Sheet No. 4J.1—01-01-88
Second Revised Sheet No. 4J.2—01-01-88
Second Revised Sheet No. 4J.3—01-01-88
Second Revised Sheet No. 4J.4—01-01-88
Second Revised Sheet No. 4J.5—01-01-88
Fourth Revised Sheet No. 4J—11-01-88
Third Revised Sheet No. 4J.1—11-01-88
Third Revised Sheet No. 4J.2—11-01-88
Third Revised Sheet No. 4J.3—11-01-88
Third Revised Sheet No. 4J.4—11-01-88
Fifth Revised Sheet No. 4J—04-01-89
Fourth Revised Sheet No. 4J.1—04-01-89
Fourth Revised Sheet No. 4J.2—04-01-89
Fourth Revised Sheet No. 4J.3—04-01-89
Fourth Revised Sheet No. 4J.4—04-01-89
Sixth Revised Sheet No. 4J—04-01-90
Fifth Revised Sheet No. 4J.1—04-01-90
Fifth Revised Sheet No. 4J.2—04-01-90
Fifth Revised Sheet No. 4J.3—04-01-90
Fifth Revised Sheet No. 4J.4—04-01-90
Third Revised Sheet No. 4L—04-01-90
Seventh Revised Sheet No. 4J—08-15-91
Sixth Revised Sheet No. 4J.1—08-15-91
Sixth Revised Sheet No. 4J.2—08-15-91
Sixth Revised Sheet No. 4J.3—08-15-91
Sixth Revised Sheet No. 4J.4—08-15-91
Third Revised Sheet No. 4J.5—08-15-91
Third Revised Sheet No. 4J.6—08-15-91
Third Revised Sheet No. 4J.7—08-15-91
Original Sheet No. 4J.8—08-15-91
Original Sheet No. 4J.9—08-15-91
Original Sheet No. 4J.10—08-15-91
Original Sheet No. 4J.11—08-15-91

The above referenced tariff sheets are being submitted to implement a revised allocation methodology for recovery of United's Take-or-Pay buyout buydown costs pursuant to Commission Order Nos. 528 and 528A, and in response to the Commission's order in Docket No. RP85-209-028, *et al.*, in which the Commission rejected the Take-or-Pay provisions of United's settlement agreement.

United states that copies of the filing were served upon all of its sales customers, interested State Commissions and each person listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington DC 20426 by July 30, 1991, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to be come a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17627 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00109; FRL-3935-7]

Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Teams; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Coordinating Committee and the four Teams of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the times and places listed below in this notice. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. The Coordinating Committee and all the Teams will hold a meeting September 9 and 10.
2. The Teams will meet September 9 from 8:30 a.m. to 5 p.m. and September 10 from 8:30 a.m. to noon.
3. The 33/50 Team will meet separately July 28 from 7:30 p.m. to 9:30 p.m. and July 29 from 8 a.m. to 4:15 p.m.
4. The State Enhancement/Decentralization Team will meet separately July 29 from 8:30 a.m. to 5 p.m. and July 30 from 8:30 a.m. to noon.
5. The TRI Team will meet separately August 5 from 8 a.m to 6 p.m. and August 6 from 8 a.m. to 1:30 p.m.

ADDRESSES: The meetings scheduled for September 9 and 10 will be held at: The Holiday Inn, 480 King St., Alexandria VA. For location sites for the other

meetings, contact Curtis Fox at the telephone number listed below.

FOR FURTHER INFORMATION CONTACT: By mail: Curtis Fox, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or Sarah Hammond, Office of Toxic Substances (TS–799), at the same address. By telephone: Curtis Fox can be reached at (202) 475–8318 and Sarah Hammond at (202) 382–7258.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of State toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States and between the States and U.S. EPA's Office of Pesticides and Toxic Substances (OPTS). FOSTTA currently consists of the four issue-specific Teams listed above, and the Coordinating Committee, which manages the Teams.

Dated: July 19, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91–17694 Filed 7–24–91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0031.

Title: Federal Crime Insurance Program.

Abstract: Homeowners, tenants, and business owners use the following FEMA forms to obtain affordable crime insurance under the federally-subsidized Federal Crime Insurance Program: FEMA Form 81-12, Application for Residential Crime Insurance Policy, and FEMA Form 81–14, Application for Commercial Crime Insurance Policy. Insureds are required to submit FEMA Form 81–46, Crime Insurance Sworn Statement and Proof of Loss, to be paid for financial losses from burglary and robbery. They also use FEMA Form 81–51, Policy Change Request, to request changes to their policies. Currently, Federal crime insurance is available in the following States or jurisdictions: Alabama, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Kansas, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, and the Virgin Islands.

Type of Respondents: Individuals, Non-profit institutions, or other for-profit, Non-profit institutions, and Small businesses or organizations..

Estimate of Total Annual Reporting and Recordkeeping Burden: 3,405 Hours.

Number of Respondents: 5,482.

Estimated Average Burden Hours Per Response: .66 Hours.

Frequency of Response: Other.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 8, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–17672 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067–0120.

Title: Implementation of Coastal Barrier Resources Act.

Abstract: Section II of the Coastal Barrier Resources Act, Public Law 97–348, as amended by Public Law 101–591, prohibits the sale of National Flood Insurance Program (NFIP) policies for buildings which have been newly constructed or substantially improved on undeveloped coastal barriers on or after October 1, 1983. The information required by title 44 of the Code of Federal Regulations, § 71.4, is used by FEMA to determine that a building which is located on a designated coastal barrier and for which application for flood insurance is being made, is neither new construction or substantial improvement, and is therefore, eligible for NFIP coverage.

Type of Respondents: Individuals and households, State or local governments, farms, businesses or other for-profit, federal agencies or employees, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 75.

Number of Respondents: 50.

Estimated Average Burden Hours Per Response: 1.5 Hours.

Frequency of Response: One-time, upon application for flood insurance.

Copies of the above information collection requirement and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–17673 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New collection.

Title: Mortgage Portfolio Protection Program.

Abstract: The Mortgage Portfolio Protection Program (MPPP) is a mechanism by which lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios can bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Implementation of the various requirements of the MPPP should result in mortgagors, following receipt of notification of the need for flood insurance, showing evidence of such a

policy or purchasing the necessary coverage through their local insurance agent or appropriate Write Your Own (WYO) company. It is intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by the program.

Type of Respondents: Individuals or households, State or local governments, farms, businesses or other for-profit, federal agencies or employees, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 507,263 Hours.

Number of Respondents: 1,000,526.

Estimated Average of Recordkeeping and Reporting Burden Hours Per Response: An estimated range of 120–640 man hours for WYO companies to set up an initial operation under the MPPP; an average of .5 hours per lender to sign an agreement with a WYO company to participate in the program; an average of .5 hours per WYO company to send notices to each mortgagor (3 notices at 10 minutes per notice); and an average of .5 hours for each mortgagor to respond to the notices and ask any questions.

Frequency of Response: One-Time.

Copies of the above information collection requirement and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

A small number of insurance companies were contacted to get estimates of the burden imposed by the MPPP guidelines. Because of the absence of experience by the WYO companies, lenders, and mortgagors in working with the MPPP guidelines, these estimates for such recordkeeping and reporting may be inaccurate; therefore, public comment is requested to assist FEMA under the Paperwork Reduction Act in accurately estimating the burden of this information collection. Specifically, comments are requested on (1) predictions from the insurance industry, in particular the WYO companies, of the estimated number of companies that will be participating in the MPPP, (2) an estimate of the number of policies lenders have in their portfolios that would be affected by the MPPP, and (3) an estimate of the amount of time required of mortgagors to respond to the notices they receive.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–17674 Filed 7–24–91; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–911–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determination.

DATES: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated July 12, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 1991:

The counties of Black Hawk, Emmet, Johnson, and Tama for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–17676 Filed 7–24–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–911–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determination.

DATES: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: The notice of major disaster for the State of Iowa, dated July 12, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 1991:

Cass County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–17677 Filed 7–24–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–911–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determinations.

DATES: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated July 12, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on June 1–15, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated area. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided

under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive order 12148, I hereby appoint S. Richard Mellinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Bremer, Butler, Chickasaw, Clayton, Fayette, Marshall, and Story for Individual Assistance and Public Assistance; and Kossuth County for Individual Assistance Only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-17678 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice to a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATED: July 18, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

Alcorn County for Public Assistance (previously designated for Individual Assistance); and Benton County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-17679 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-910-DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-910-DR), dated June 21, 1991, and related determinations.

DATED: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Tennessee, dated June 21, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 1991:

Cheatham County for Public Assistance.

(Catalog of Federal Domestic Assistance no. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-17680 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200550.

Title: Maryland Port Administration/The Terminal Corporation Marine Terminal Agreement.

Parties: Maryland Port Administration (MPA) The Terminal Corporation (TTC).

Synopsis: The Agreement, filed July 17, 1991, provides TTC with the lease of a certain parcel of land with buildings and improvements situated in the North Locust Point Marine Terminal for a term of three years. TTC will pay to MPA a monthly rent of $2,261.67.

Agreement Nos.: 224-004177-007 through 224-004177-017.

Title: Port of Seattle/Stevedoring Services of America Terminal Agreement.

Parties: Port of Seattle Stevedoring Services of America.

Synopsis: Agreement Nos. 224-004177-007 through 224-004177-017 provide for: Postponing the parties' rental negotiation and renegotiation arbitration dates specified in paragraph 3(c) of the basic agreement, as amended, to allow additional time to conclude negotiations; certain interim rental rates to continue to be billed pending agreement upon and billing of the new rental rates; the effective date of the renegotiated rent to be no later than January 1, 1990, or to apply retroactively (if necessary) to January 1, 1990 as stipulated in the agreement; and, certain interest payments to apply to any underpayment or over-payment of the new rent for the period beginning January 1, 1990, until the renegotiated rental rates are agreed upon and paid.

Dated: July 19, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17660 Filed 7-24-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-31]

Actions To Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade; Notice and Order of Investigation

Upon publication of this Notice and Order in the **Federal Register**, the Federal Maritime Commission ("Commission") initiates an investigation of shipping conditions in the United States/People's Republic of

China Trade ("U.S./PRC Trade" or "PRC Trade") under the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a. This investigation seeks to determine whether conditions exist in the PRC Trade which adversely affect the operations of United States carriers and which do not exist for People's Republic of China ("PRC") carriers in the United States ("U.S.").

On January 29, 1991, the Commission issued an Order directed to the two United States carriers [1] and two PRC carriers [2] which serve the U.S./PRC Trade. By simultaneous **Federal Register** Notice, the Commission solicited relevant information from interested persons. These actions resulted from allegations and information made available to the Commission concerning five subject matter areas affecting commercial operations of U.S. carriers in the PRC, as follows:

1. *Full branch office status.* It was reported that U.S. carriers' representative offices in the PRC are precluded from conducting normal business activities, such as soliciting and booking cargo, issuing bills of lading, collecting freight charges, and contracting for handling and ancillary services.

2. *Recognition of carriers' tarriffs.* U.S. carriers allegedly are precluded from assessing their lawful tariff rates, and from effecting rate increases deemed necessary to their efficient operation in the PRC Trade.

3. *Port service issues.* It was reported that U.S. carriers are not permitted to select, own or operate dockside facilities and equipment, or to control terminal services, and that U.S. carriers are charged exorbitant rates for port calls.

4. *Intermodal and related services.* U.S. carriers allegedly cannot own or operate trucking services, inland CY and CFS terminals, conduct warehousing activities, or provide services as a dockside agency.

5. *"Doing business" costs.* It was alleged that U.S. carriers are assessed disproportionately high charges in the course of their business operations in the PRC or are assessed discriminatory charges vis-a-vis PRC carriers.

To determine the accuracy of these allegations and to obtain additional relevant information, the Commission sought evidence regarding, *inter alia,* attempts by U.S. carriers to persuade the PRC to ease these restrictive practices and the PRC responses to such efforts; the existence and financial or operational effect of any disadvantage or adversity suffered by U.S. carriers as a result of these PRC policies or practices; and the existence or lack of comparable restrictions on PRC carriers in their activities in the PRC and in the United States. In response to the Order, affidavits, documents and memoranda were submitted by the named PRC and U.S. carriers.[3] Comments responding to the **Federal Register** Notice were submitted by the Shipbuilders Council of America, Craig B. Simonsen, and the Asia North American Eastbound Rate Agreement ("ANERA").

These responses and comments provided substantial information with respect to the issues raised in the Order. Based on a review of that information, the following summarizes the current status of PRC restrictive practices:

Full Branch Office Status

1. In April 1986, the PRC enacted the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises. Article 5 of the Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises restricts the establishment of wholly foreign-owned enterprises in the businesses of traffic and transportation.

2. As a result of the law on wholly foreign-owned enterprises and its related rules, the only two means by which a foreign carrier can operate in the PRC on a long term basis are (a) the resident representative office and (b) joint ventures between foreign carriers and a PRC partner operating under the supervision of PRC authorities.

3. In October 1980, the PRC State Council promulgated Interim Regulations of the People's Republic of China Concerning the Control of Resident Offices of Foreign Enterprises ("Interim Regulations"). Article 2 states that no foreign enterprise is allowed to start business activities in the PRC unless the registration procedure is completed and approval is granted by PRC authorities. Maritime shipping operators must apply to the PRC Ministry of Communications, under Article 4 of the Interim Regulations.

4. In March 1983, the State Administration for Industry and Commerce promulgated the Procedures of the State Administration for Industry and Commerce for the Registration and Administration of Resident Representative Offices of Foreign Enterprises (the "Procedures"). Article 3 provides that resident representative offices of foreign enterprises in the PRC shall conduct "indirect business operations" only.

5. Article 15 of the Procedures provides that the State Administration for Industry and Commerce may assess a penalty of not more than 20,000 yuan for representative offices which engage in direct business operations.

6. In July 1979, the National People's Congress of the PRC promulgated the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment. Article 1 of the law permits foreign companies to form joint ventures in the PRC with PRC companies. Under Article 3, joint ventures must apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties. The joint venture also shall register with the State Administration for Industry and Commerce in order to be licensed prior to operation.

7. Joint ventures must be managed in cooperation with a PRC partner. As the PRC company remains under direct supervision of PRC governmental authorities, the foreign carrier's control over day-to-day operations of the joint venture is necessarily restricted. Article 6 of the law provides that the chairman of the board of directors of the joint venture shall be appointed by the PRC company.

8. As a result of PRC restrictions on the activities of branch offices, U.S. carriers must employ PRC-controlled agents in order to conduct their business activities, such as signing contracts, issuing bills of lading and cargo reservation documents, and collecting freight charges. The only PRC companies providing such agency services are SINOTRANS and China Ocean Shipping Agency ("PENAVICO").

9. In addition to its status as ocean common carrier and shipping agent in the PRC Trade, SINOTRANS is a PRC freight forwarder and feeder vessel operator. SINOTRANS is subordinate to the Ministry of Foreign Economic Relations and Trade. PENAVICO is a subsidiary of COSCO, which is a direct competitor of the U.S. carriers. PENAVICO is subordinate to the Ministry of Communications.

10. U.S. carriers are unable to directly control carrier costs and activities in the PRC due to PRC restrictions on direct business operations. As a result, U.S. carriers are unable to control issuance

[1] American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land").

[2] China Ocean Shipping Co. ("COSCO") and China National Foreign Trade Transportation Corp. ("SINOTRANS").

[3] APL, Sea-Land and COSCO submitted their responses under claim of confidentiality, as permitted under 46 CFR Part 588. SINOTRANS submitted a two-page, unverified response without assertion of confidential treatment. COSCO subsequently withdrew its claim of confidentiality.

of bills of lading to prevent inaccurate or improper issuance of carrier documents, and are subjected to limits on the use of U.S. feeder vessels and to significantly higher costs of utilizing PRC feeder vessels. In addition, U.S. carriers are subjected to paying charges for agency fees and services which are significantly higher than the costs of performing their own agency and documentation activities, and are denied the opportunity to develop more cost-efficient options for performing agency functions.

11. Similar restrictions on branch office activities do not exist for PRC carriers doing business in the United States.

Recognition of Carriers' Tariffs

1. In May 1990, the PRC Ministry of Communications enacted the Regulations Governing the Management of International Liner Shipping (the "Regulations"). Article 9 of the Regulations provides that all agency work for international shipping companies shall be performed by shipping agencies approved by the Ministry of Communications.

2. In 1990, the PRC also promulgated the Provisions on the Administration of Shipping Agencies for International Ocean Going Ships (the "Provisions"). Article 4 of the Provisions provides that only those shipping agencies approved by the Ministry of Communications are permitted to engage in shipping agency business in the PRC. As the only shipping agencies approved in the PRC, PENAVICO and SINOTRANS operate as state monopolies under PRC law.

3. Article 8 of the Provisions states that the Ministry of Communications can define the scope of the business of a shipping agency. Within that scope, the functions to be fulfilled by a shipping agency are:

(1) Attending to the procedure for ship's entry into and departure from port. Arranging ship's berthing and loading/unloading;

(2) Arranging custom formalities for ship, cargo and container;

(3) Arranging forwarding, transshipment and multi-modal transportation of cargo and container;

(4) Signing bills of lading, contracts of affreightment and despatch/demurrage agreements when authorized by shipowner or master of a ship;

(5) Attending to passenger's international sea passage;

(6) Canvassing cargo and booking shipping space for shippers;

(7) Arranging for maritime salvage and attending to cases of marine accident and claims;

(8) Collecting and effecting payment for the entrusting party and settling of accounts;

(9) Other shipping agency business and services.

4. COSCO states that, of the above, only those functions of executing carrier bills of lading and cargo reservation documents, and collection of ocean freight rates and charges must be performed by PRC shipping agents. It appears, however, that all of the above functions are within the scope of business of a shipping agency, as defined by the Ministry of Communications, and U.S. carrier principals are therefore precluded from conducting such activities.

5. Shipping agencies are required to be a "legal person" of a state-operated enterprise of the People's Republic of China. As a state-operated enterprise under PRC law, COSCO can establish, own and operate subsidiaries for the performance of shipping agency functions. U.S. carriers must contract with PRC companies for the performance of these direct business activities.

6. Article 12 of the Provisions provides that shipping agencies must apply the uniform rates for dues and charges set by the Ministry of Communications.

7. It is the practice of SINOTRANS and PENAVICO that U.S. carriers' tariffs be maintained at a level no higher than those published by the Far East Enterprising Co. (H.K.), Ltd. ("FARENCO"). FARENCO acts as the Hong Kong agent for SINOTRANS, and is believed to be a subsidiary of SINOTRANS.

8. SINOTRANS and PENAVICO use their control over the authentication of bills of lading to book and rate cargo contrary to the U.S. carriers' tariffs.

9. SINOTRANS and PENAVICO use their control over collection of ocean freight money to assess and collect freight at less than the rates and charges established by the U.S. carriers in their tariffs.[4]

10. Similar restrictions on recognition and observance of carriers' tariffs in the United States/PRC Trade do not exist for PRC carriers doing business in the United States.

[4] Section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1), makes it a prohibited act for any person to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. the Commission does not intend, however, to address questions of possible Shipping Act violations by these PRC shipping agents on behalf of PRC shippers in the context of the current FSPA proceeding.

Port Service Issues [5]

(a) Port handling charges:

1. In December 1990, the PRC State Council promulgated the Rules on Control of International Ocean Shipping of Containers (the "Rules on Container Shipping"). Article 20 of the Rules on Container Shipping provides that fees for ocean shipping of international containers and other fees should be charged in accordance with transport prices and rates stipulated by the PRC.

2. Article 32 of the Rules on Container Shipping states that violations of the Rules and state decrees concerning transport fees are subject to punishment by PRC authorities.

3. In March 1990, the Ministry of Communications issued Regulations Governing Collection of Port Dues and Charges on Ocean Going Vessels Engaged in International Trade and on Imported or Exported Cargoes, which publish a single set of charges for the use of port, terminal or other facilities and equipment applicable to PRC and foreign carriers. Nevertheless, U.S. carriers operating their own feeder vessels to PRC ports are assessed higher charges for the same port services than PRC carriers.

4. COSCO states that the higher port charge for U.S. feeder vessels "compensates" for harbor and energy taxes and contributions. However, U.S. carriers are exempt from harbor and energy taxes and levies under PRC law.

5. Port charges in the United States are not comparable to PRC port charges inasmuch as U.S. port charges are not based on the flag of the vessel being served.

(b) Feeder service:

6. SINOTRANS, COSCO and other PRC vessel operators provide feeder vessel service between Hong Kong and the PRC ports of Dalian, Qinhuangdao, Xingang, Shanghai, Zhangjiagang, Ninbo, Qingdao, Fuzhou, Nantong, and Nanjing. PRC carriers do not provide

[5] The Commission's Order of January 29, 1991 sought, *inter alia*, information concerning the existence and effect of PRC laws restricting the ownership and operation of dockside terminals and terminal handling equipment. Review of the carriers' responses to the Order confirms the existence of PRC laws, rules and regulations restricting the establishment of terminals in the PRC by wholly foreign-owned enterprises. The U.S. carriers make the point, however, that elimination of other major trade restrictions facing the U.S. carriers are seminal to their decisions to construct or operate PRC terminals. Accordingly, the Commission has determined not to address this latter issue in the present FSPA proceeding. The Commission will consider taking action under the FSPA or Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, should it later appear that PRC restrictions on terminals and terminal equipment are adversely affecting U.S. carriers.

feeder service between Hong Kong and the PRC ports of Xiamen, Chiwan and Whampoa. U.S. feeder services operate between the latter ports.

7. SINOTRANS and PENAVICO, through their control of cargo reservation and issuance of bills of lading, deny export cargo to U.S. feeder vessels, thereby denying U.S. carriers' feeder vessels the opportunity to serve PRC ports other than Xiamen, Chiwan and Whampoa.

8. SINOTRANS and PENAVICO assess U.S. carriers charges for utilizing PRC feeder vessels which are significantly higher than would be the costs of furnishing the same service by U.S. feeder vessel.

9. U.S. laws do not impose restrictions on the ability of PRC carriers to own or operate feeder services between U.S. and foreign ports comparable to PRC restrictions on U.S. carriers.

Intermodal and Related Services

1. PRC laws restrict U.S. carriers from ownership and operation of (a) trucking services for intermodal transport of their own containers, (b) inland CY and CFS terminals, and (c) related warehousing activities.

2. Article 7 of the Rules on Control of International Ocean Shipping of Containers provides that proposals for transshipment and transport stations must be examined and ratified by provincial, autonomous regional, or municipal transport governing authorities.

3. As a state-operated enterprise under PRC law, COSCO can establish, own and operate subsidiaries for the performance of inland terminal CY, CFS and warehousing operations.

4. U.S. carriers must contract with PRC companies for the performance of these business activities. As a result, U.S. carriers are subjected to charges for such services which are significantly higher than the costs of performing their own trucking, CY, CFS and related warehousing activities, and are denied the opportunity to develop more cost-efficient options for performing these business activities.

5. Sea-Land applied to PRC authorities for a trucking license on behalf of Orient Trucking Limited, a subsidiary of Sea-Land, to permit it to operate within Guangdong and Fujian provinces, adjacent to Hong Kong. No response has been provided to the application by PRC authorities.

6. U.S. laws do not restrict PRC carriers from owning or operating trucking services or inland terminal facilities.

"Doing Business" Costs

1. SINOTRANS and PENAVICO utilize their monopoly control over shipping agency functions in the PRC to assess charges which, for U.S. carriers, are excessively high or discriminatorily applied vis-a-vis PRC carriers. U.S. carriers are denied the opportunity to develop more cost-efficient options for performing agency functions.

2. Among the excessive charges imposed by PRC agents on U.S. carriers are cargo "stuffing charges", loading incentives to achieve higher container capacity utilization, booking commissions, and documentation costs.

3. U.S. laws do not restrict PRC carriers from contracting for shipping agency functions, or from performing agency and documentation services with respect to the PRC carrier's own cargo.

Based on all the foregoing information, it appears that the practices of the PRC Government, PRC carriers and persons in the PRC providing maritime-related services result in the existence of conditions that adversely affect the operations of U.S. carriers in the U.S. oceanborne trade and that such conditions do not exist for PRC carriers in the United States.

Accordingly, the Commission institutes this investigation under the FSPA to determine whether U.S. carriers have been or will be adversely affected by the PRC laws, practices and policies described above, whether remedial action is required, and, if so, what those remedies should be.

In particular, the Commission directs the parties to address the five major issues as more fully described above: (1) Full branch office status; (2) Recognition of carriers' tariffs; (3) Port service issues; (4) Intermodal and related services; and (5) "Doing business" costs. Additional factual issues that are believed to be relevant to the Commission's examination of these PRC practices under the standards of the FSPA may be raised by any party as well. When facts are asserted, those facts should be set forth in detail in affidavits of knowledgeable persons and should include any documentary evidence in support of such affidavits.

Proceedings under the FSPA are conducted within the framework of statutorily-imposed deadlines. Once initiated, the Commission must complete an investigation and render a decision within 120 days unless certain factors warrant a 90-day extension. Because of these time constraints, the proceeding will be limited to two rounds of simultaneous submissions by all parties. There will be an initial filing and a reply filing. Moreover, because of the time constraints, the proceeding will be conducted on the basis of written submissions only, without oral evidentiary hearings and without discovery. Any motions filed will not alter the deadlines established by the procedural schedule set forth below. In its discretion, the Commission may withhold ruling on such motions until a final order.

Any person seeking to participate as an intervenor must file its submissions in accordance with the procedural schedule established below. Moreover, any person interested in participating as an intervenor must file a notice of intention to intervene with the Commission's Secretary and serve such notice on all parties. The purpose of this notice is to ensure that intervenors will be served by all participating parties. The filing of a notice of intention to intervene, however, does not obligate a party to file a written affidavit or memorandum.

Now therefore, it is ordered, That pursuant to section 10002(b) of the Foreign Shipping Practices Act of 1988, the Commission hereby initiates an investigation to determine whether any laws, rules, regulations, policies or practices of the PRC Government, or any practices of PRC carriers or other persons providing maritime or maritime-related services in the PRC result in the existence of conditions that adversely affect U.S. carriers and do not exist for PRC carriers in the United States and, if such adverse conditions are found to exist, what shall be an appropriate remedy or remedies;

It is further ordered, That China Ocean Shipping Company and China National Foreign Trade Transportation Corp. are each named PRC carrier parties in this proceeding;

It is further ordered, That American President Lines, Ltd. and Sea-Land Service, Inc. are each named United States carrier parties in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding;

It is further ordered, That any person interested in participating in this proceeding shall file a notice of intention to participate as an intervenor with the Commission's Secretary by August 14, 1991;

It is further ordered, That such interested persons shall participate in this proceeding in accordance with the filing schedule set forth below;

It is further ordered, That the proceeding shall include oral argument in the discretion of the Commission;

It is further ordered, That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered, That the responses to the Commission's January 29, 1991 Order that were filed by the two U.S. carrier parties and the two PRC carrier parties and all comments filed in response to the simultaneous **Federal Register** notice shall be made part of the record herein. If any party wishes a portion of those prior responses to be protected from public disclosure, that party shall file a motion requesting such protection by August 5, 1991 and shall identify the specific portions for which such protection is sought, and shall explain in detail why such protection is necessary;

It is further ordered, That this notice and Order of Investigation be published in the **Federal Register**, and that a copy thereof be served upon the PRC carrier parties and the United States carrier parties;

It is further ordered, That this proceeding shall be conducted in accordance with the Commission's Rules in 46 CFR part 588;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

It is further ordered, That all initial affidavits and memoranda of law shall be filed no later than August 26, 1991;

It is further ordered, That all reply affidavits and memoranda of law shall be filed no later than September 24, 1991; and

Finally, it is ordered, That pursuant to the terms of the Foreign Shipping Practices Act of 1988 and the Commission's Rules in Part 588, a decision by the Commission in this proceeding shall be issued by November 22, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17718 Filed 7-24-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0014, Transfer Order Surplus Personal Property/Continuation Sheet. The form is used by nonprofit agencies to request donations of surplus property.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 50,000; annual responses: 1; average hours per response: 0.30; burden hours: 15,000.

FOR FURTHER INFORMATION CONTACT: Audrey L. Harris, (703) 557-1234. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

DATES: July 15, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-17653 Filed 7-24-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for Native Hawaiian Health Centers

AGENCY: Health Resources and Services Administration.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $2.3 million in fiscal year (FY) 1991 for grants to qualified entities, including Native Hawaiian Health Centers, Native Hawaiian organizations, or public or nonprofit private health entities to provide comprehensive health promotion, disease prevention, and primary health services to Native Hawaiians. These grants will be awarded under the provisions of Public Law 100-579, The Native Hawaiian Health Care Act of 1988. Up to nine grants may be awarded at a funding level ranging from $250,000 to $600,000 annually depending on the number of persons targeted to be reached by the programs and the comprehensiveness of the programs. The project period will be for three years.

The entities to whom grants may be awarded are as follows:

(1) Two entities serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served;

(2) Two entities serving individuals on O'ahu;

(3) One entity serving individuals on Moloka'i, from which individuals on Lana'i shall also be served;

(4) Two entities serving individuals on Maui;

(5) Two entities serving individuals on Hawai'i.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program is related to the priority area of Clinical Preventive Services and Educational Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202 783-3238).

ADDRESSES: Application kits (Form PHS 5161-1, as approved by the Office of Management and Budget under control number 0937-0189), may be obtained from and completed applications should be mailed to: Ms. Linda Gash, Grants Management Officer (GMO), Office of Grants Management, Region IX-PHS, 50 United Nations Plaza, San Francisco, California 94102. The GMO can also provide assistance on business management issues.

DUE DATE: The deadline date for receipt of applications by the GMO will be August 26, 1991. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Private metered postmarks shall not be acceptable as proofs of timely mailing. Applications that do not meet the deadline date will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance please contact Mr. David Callagy, U.S. Public Health Service representative in Hawaii,

University of Hawaii, School of Public Health, 1960 East-West Road, Honolulu, Hawaii 96822. His telephone number is (808) 956–8914.

ELIGIBLE APPLICANTS: An entity qualifies to apply if it is (1) A Native Hawaiian health center; (2) a native Hawaiian organization; or (3) a public or nonprofit private health provider.

Native Hawaiian health centers are entities which (1) are organized under the laws of the State of Hawaii; (2) provide or arrange for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable; (3) are public or nonprofit private entities; and (4) have Native Hawaiian health practitioners significantly participating in the planning, management, monitoring, and evaluation of health services.

Native Hawaiian organizations are entities which (1) Serve the interests of Native Hawaiians; (2) are (a) recongized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under the Native Hawaiian Health Care Act of 1988 for the benefit of Native Hawaiians, and (b) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements of the contracts the organizations enter into with, or grants the organizations receive from, the Secretary under the Native Hawaiian Health Care Act; (3) have Native Hawaiian health practitioners significantly participating in the planning, management, monitoring, and evaluation of the health services; and (4) are public or nonprofit private entities.

Note: The term "Papa Ola Lokahi" means an organization composed of E Ola Mau; the Office of Hawaiian Affairs of the State of Hawaii; Alu Like Inc.; the University of Hawaii; and the Office of Hawaiian Health of the Hawaii State Department of Health.

SUPPLEMENTARY INFORMATION: Funding under this grant program is intended to elevate the health status of Native Hawaiians living in Hawaii by providing primary health care and health education to create changes within the health care system that will address the health needs of the Native Hawaiians. The services of these programs will be developed around outreach and referral components and will attempt to integrate tarditional health healer concepts with western medicine so that existing barriers to health care can be removed. It is anticipated that the primary care and health promotion and disease prevention components will be integrated into one system of care and that the existing health resources of the community will be used to the greatest extent possible.

PROJECT REQUIREMENTS: Recipients of funds under the Native Hawaiian Health Centers program are required to provide the following services:

(1) Outreach services to inform Native Hawaiians of the availability of health services;

(2) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(3) Services of physicians, physicians' assistants, or nursse practitioners;

(4) Immunizations;

(5) Prevention and control of diabetes, high blood pressure, and otitis media;

(6) Pregnancy and infant care; and

(7) Improvement of nutrition.

In addition to the mandatory services listed above, the following services may be provided:

(1) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(2) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(3) Other health promotion disease prevention, and primary health services.

USE OF FUNDS: Grants may not be awarded unless the entity agrees that it will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to but not less than $1 for each $3 of Federal funds provided. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. This requirement may be waived if the entity is a nonprofit private entity, and if the Secretary determines, in consultation with Papa Ola Lokahi, that it is not feasible for the entity to comply with the requirement. Grant funds may not be used to pay for (1) inpatient services; (2) cash payments to intended recipients of health services; or (3) purchasing or improving real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. The entity may not expend more than 10 percent of amounts received under the grant for administering the grant. Other requirements and limitations are set forth in Public Law 100–579.

CRITERIA FOR EVALUATING APPLICATIONS: An objective review of applications for grant support will consider the adequacy of the following with reference to the provisions of the Native Hawaiian Health Care Act and the strategy for the Comprehensive Health Care Plan for Native Hawaiians established by Papa Ola Lokahi:

(1) Assessment of Community need;

(2) Program of proposed services;

(3) Management and staffing plan;

(4) Budget;

(5) Evaluation plan.

Priority consideration will be given to Native Hawaiian health centers and Native Hawaiian organizations, and, to the extent possible, those applications whose health promotion and disease prevention services are provided through Native Hawaiian health centers.

OTHER GRANT INFORMATION: The grant program to provide Native Hawaiian Health Centers has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to accommodate or explain its response to State process recommendations it receives after that data. A current list of SPOCs is included in the application kit.

(See Part 148 Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Grants will be administered in accordance with Department of Health and Human Services Regulations in 45

CFR part 74 and are subject to the provisions of the Public Health Service Grants Policy Statement.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.932.

Dated: June 11, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-17648 Filed 7-24-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-91-4212-24]

Temporary Closure of Public Lands; Washoe County, NV

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1991 Reno National Championship Air Races.

EFFECTIVE DATES: September 9 through September 15, 1991.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼.
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated this 12th day of July, 1991.

James W. Elliott,

District Manager.

[FR Doc. 91-17617 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-3110-10-B002; CA 28381]

Exchange of Public and Private Lands in San Luis Obispo County, CA; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28381.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T. 29S., R. 14E.
Sec. 25, S½SW¼, W½SE¼.
160 acres—(parcel #5).
T. 30S., R. 14E.
Sec. 13, Lots 4 & 6.
99.25 acres—(parcel #13).
Sec. 14, Lots 1 & 2.
98.64 acres—(parcel #13).

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian, California

T. 30S., R. 20E.
Sec. 19 to 22, 25 to 31, and 34 to 36.
T. 30S., R. 21E.
Sec. 23 to 36.
T. 30S., R. 22E.
Sec. 31.
T. 31S., R. 20E.
Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25.
T. 31S., R. 21E.
Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36.
T. 31S., R. 22E.
Sec. 3, 6, 7, and 17 to 21.
T. 32S., R. 20E.
Sec. 19, 26, and 27.
T. 32S., R. 21E.
Sec. 1 to 5, and 10 to 13.
T. 32S., R. 22E.
Sec. 6, 7, 16, 19, to 22, 27, to 33, 35, and 36.

San Bernardino Meridian, California

T. 12N., R. 27W.
Sec. 35.
T. 12N., R. 26W.
Sec. 31, and 33 to 36.
T. 12N., R. 25W.
Sec. 31 to 33, and 36.
T. 11N., R. 27W.
Sec. 1 to 4, and 10 to 14.
T. 11N., R. 26W.
Sec. 1 to 18, 20 to 25, and 36.
T. 11N., R. 25W.
Sec. 3, 6, and 7 to 35.
T. 11N., R. 24W.
Sec. 18 to 20 and 29 to 32.
T. 10N., R. 26W.
Sec. 11 and 12.
T. 10N., R. 25W.
Sec. 1 to 3, 7, 8, 12, and 16.

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjacent landowners by The Nature Conservancy. Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Parcel #5 will also be subject to an electric transmission line right-of-way (#S034527) maintained by the Pacific Gas and Electric Company. Publication of this notice in the **Federal Register** segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species, and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are different to manage. The public interest will be well served by completing the exchange. Interested parties may submit comments to the Area Manager at the following address until September 9, 1991. For further information contact: Bureau of Land Mangement, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308; (805) 861-4236.

Dated: June 27, 1991.

Glen A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91-16053 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-40-M

[G-010-G1-0119-4212-14; NMNM 85628]

A Direct Sale of Public Land to Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian, New Mexico

T. 22 N. R. 8 E.,
Tract A, within the Sebastian Martin Land Grant.

The subject public land contains 3.05 acres and will be sold to Rio Arriba County for a waste transfer site. As stated in the Federal Land Policy and Management Act (Pub. L. 94-579 October 21, 1976) this action is consistent with the Land Ownership Adjustment as stated under page 2-14 of the Resource Management Plan dated October 1986, in that it will serve the public interest and would have no adverse effect on any other resource. The disposal is consistent with State and local government programs, plans, and applicable regulations.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto at the Bureau of Land Management (BLM), Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, or at (505) 758-8851 (FTS) 479-8801.

ADDRESSES: Comments should be sent to District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico 87107.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before September 9, 1991.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 270 days from date of publication of this notice in the **Federal Register** or upon publication of notice of termination.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 16, 1991.

Robert Dale,

District Manager.

[FR Doc. 91-17650 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-01-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below have been officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico.

New Mexico Principal Meridian, New Mexico

T. 13 N., R. 9 W., Accepted June 3, 1991, for Group 846 NM.
T. 23 N., R. 12 W., Accepted June 5, 1991, for Group 850 NM.
T. 8 N., R. 6 W., Accepted May 29, 1991, for Group 866 NM.
T. 10 N., R. 9 W., Accepted June 3, 1991, for Group 888 NM.
T. 11 N., R. 2 E., Accepted June 21, 1991, for Group 887 NM.
T. 10 N., R. 2 E., Accepted June 21, 1991, for Group 887 NM.
T. 24 S., R. 25 E., Accepted June 21, 1991, for Group 875 NM.

Supplemental Plats

T. 16 S., R. 10 E., Accepted May 30, 1991.
T. 15 N., R. 7 E., Accepted May 24, 1991.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Copies may be obtained upon payment of $2.50 per sheet.

Dated: July 16, 1991.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91-17647 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-01-4214-10; WYW 116382]

Termination of Proposed Withdrawal of Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal by the Department of Agriculture, U.S. Forest Service, on 9,538.99 acres of National Forest System land for the protection of the Clark's Fork Canyon Area. This action withdrew the land from location and entry under the United States mining laws. However, the land remains withdrawn to location and entry under the United States mining laws by virtue of its recent designation as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287).

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, (307) 775-6115.

SUPPLEMENTARY INFORMATION: On August 7, 1989, a notice of proposed withdrawal of land for the Department of Agriculture was published in the **Federal Register**, 54 FR 32432 (1989). The purpose of the application was to protect the Clark's Fork Canyon Area until Congress acted upon a recommendation to include the land in the National Wild and Scenic River System. Congress recently designated portions of the Clark's Fork River as a wild river under the Wild and Scenic Rivers Act, and this has eliminated the need for this proposed withdrawal.

The segregative effect of the proposed withdrawal is hereby terminated on the following described land:

Sixth Principal Meridian, Wyoming

Shoshone National Forest

T. 55 N., R. 104 W.,
Sec. 3, N½ lot 3, lot 4;
Sec. 4, lot 1, N½ lot 2.
T. 56 N., R. 104 W.,
Sec. 12, S½SW¼SW¼, SE¼SW¼, S½N½SE¼, S½SE¼;
Sec. 13, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼;
Sec. 14, E½NE¼NE¼, SE¼NE¼, SE¼;
Sec. 19, W½NW¼, SE¼NW¼, SW¼, SW¼NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 20, SW¼SW¼SW¼;
Sec. 23, NE¼, E½E½NW¼, E½NE¼SW¼, SE¼SW¼, SE¼;
Sec. 24, NW¼NW¼, S½SW¼NW¼;
Sec. 26, N½NE¼, SW¼NE¼, W½SE¼NE¼, E½NW¼, E½SW¼NW¼, SW¼, NW¼SE¼, W½SW¼SE¼;
Sec. 27, E½NE¼SE¼, SE¼SE¼;
Sec. 29, SW¼SW¼NE¼, SW¼NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
Sec. 30, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 32, NE¼, NE¼NW¼, N½NW¼NW¼, N½SE¼NW¼, NE¼SE¼, N½NW¼SE¼;
Sec. 33, SW¼NE¼, S½SE¼NE¼, S½N½NW¼, S½NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;

Sec. 34, NE¼NE¼, S½NW¼NE¼, S½NE¼, S½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼, N½SE¼ SE¼;
Sec. 35, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, N½NW¼SW¼.
T. 56 N., R. 105 W.,
Sec. 3, S½NW¼NW¼, S½N½ NW¼NW¼, S½NW¼, SW¼, W½NE¼SE¼, NW¼SE¼, S½SE¼;
Sec. 4, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 5, N½NE¼, SW¼NE¼, N½SE¼ NE¼, NW¼, N½NW¼SW¼;
Sec. 6, NE¼NE¼, S½NW¼NE¼, S½N½ NW¼NE¼, S½NW¼, N½S½, N½SW¼ SW¼, SW¼SW¼SW¼, W½SE¼ SW¼SW¼, N½SW¼SE¼, except that portion within HES 49;
Sec. 10, NE¼, NE¼NW¼, N½NW¼ NW¼, NE¼SE¼;
Sec. 11, W½SW¼NE¼, NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, W½NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, W½NW¼SE¼, SW¼SE¼, W½SE¼SE¼;
Sec. 14, N½NE¼, E½SW¼NE¼, SE¼NE¼, NE¼NW¼, E½NW¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼.
T. 56 N., R. 106 W.,
Sec. 1, S½SW¼NE¼, SE¼NE¼, S½ except that portion within HES 49;
Sec. 2, S½;
Sec. 3, lots 3–7, 9–12, NE¼SW¼, SE¼;
Sec. 4, lots 1–2, 7–10, except those portions of HES 40 and HES 177;
Sec. 10, N½NE¼NE¼;
Sec. 11, N½NE¼, NE¼NW¼, N½NW¼ NW¼;
Sec. 12, N¼N¼N¼.
T. 57 N., R. 105 W.,
Sec. 34, S½SE¼;
Sec. 35, S½SW¼.

The area described contains 9,538.99 acres in Park County.

Dated: July 17, 1991.

David J. Walter,
Acting State Director, Wyoming.

[FR Doc. 91-17646 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Draft Recovery Plan for the American Burying Beetle for Review and Comment; Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft American Burying Beetle Recovery Plan. This species occurs in two widely separated populations on public and private lands in Rhode Island and Oklahoma. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before September 5 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316) or the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Ralph Pill Marketplace, 4th Floor, Concord, New Hampshire 03301-4901 (603/225-1467). Comments on the plan should be addressed to Michael Amaral at the New England Field Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Michael Amaral (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft American Burying Beetle (*Nicrophorus americanus*) Recovery Plan. This carrion beetle, once widely distributed throughout temperate eastern North America, now consists of fewer than 1,000 individuals in two widely separated natural populations: A stable population on Block Island, off the coast of Rhode Island, and a marginal population in eastern Oklahoma. In addition, two laboratory colonies are being maintained for purposes of research and propagation, and in 1990 and 1991, about 100 American burying beetles were reintroduced to historical habitat on Penikese Island, Massachusetts. Based on the drastic decline and extirpation of the species over nearly its entire historical range, the American burying beetle was listed as federally endangered in July of 1989.

The species requires carrion of a certain size for reproductive purposes, and the primary threat to its continued existence appears to be lack of available carrion along with competition from other species for limited carrion resources. The American burying beetle formerly occurred on a variety of habitat types in 35 states and three Canadian provinces. Considering this broad geographic range, it is probable that vegetation and soil structures *per se* are not necessaryily limiting for the species, as long as suitable conditions exist for carcass burial.

The recovery objective is to reduce the immediacy of the threat of extinction by stabilizing the two extant populations, and to increase the species' chances for recovery by establishing at least 14 additional populations throughout its former geographic range. This will be accomplished through protecting the managing extant populations, maintaining captive populations and conducting reintroduction efforts, searching for additional populations, research, and implementing information and education programs. If the recovery objective is met, reclassification of the American burying beetle to threatened status will be considered.

This Recovery Plan is being submitted for technical/agency review. After consideration of comments received during the review period, the plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 19, 1991.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 91-17657 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 697819,

Applicant: USFWS, Regional Director, Region 4, Atlanta, GA.

The applicant requests amendment of their current permit to include take of the whooping crane (*Grus americana*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

PRT 690696,

Applicant: USFWS, Regional Director, Region 2, Albuquerque, NM.

The applicant requests amendment to their current permit to include import of live hatchlings and older age classes of the following sea turtles: olive ridley (*Lepidochelys olivacea*), hawksbill (*Eretmochelys imbricata*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), and green sea turtle (*Chelonia mydas*) from Mexico and worldwide sources for the purpose of scientific research and enhancement of propagation or survival of the species.

PRT 758815,

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to import from Chile 9 male and 10 female captive hatched Darwin's rhea (*Pterocnemia pennata pennata*) and sell in interstate commerce to the following U.S. zoos: Cincinnati Zoo, Cleveland Metroparks Zoo, National Zoological Park, Roger Williams Park Zoo, Oklahoma City Zoo, and Reid Park Zoo for the purpose of enhancement of propagation and survival of the species.

PRT 759401,

Applicant: National Marine Fisheries Service, La Jolla, CA.

The applicant requests a permit to import one dead specimen of totoaba (*Cynoscion macdonaldi*) for the purpose of scientific study. Specimen was collected by gillnet fishermen of Guaymas, Mexico. Specimen's muscle tissue will be studied by isoelectric focusing for species identification.

PRT 704930,

Applicant: USFWS, Regional Director, Region 6, Denver, CO.

The applicant requests amendment of their current permit to include take of the Uncompahgre fritillary butterfly (*Boloria acrocnema*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 22, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-17667 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0077); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Notice of Intent/Report of Well Abandonment, Form MMS–332.

OMB approval number: 1010–0077.

Abstract: Respondents submit Form MMS–332 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use during the conduct of well-abandonment operations, including temporary abandonments where the wellbore will be re-entered and completed or permanently abandoned.

Bureau form number: Form MMS–332.

Frequency: On occasion.

Description of respondents: Outer Continental Shelf, oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 1,650.

Annual burden hours: 825.

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Dated: June 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-17645 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirement Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen (703) 875–1573, MS/AS/ISS, room 1209B, SA–14, Washington, DC 20523–1413.

Date Submitted: July 10, 1991.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0011.

Form Number: A.I.D. 1010–2.

Type of Submission: Reinstatement

Title: Application for Assistance—American Schools and Hospitals Abroad.

Purpose: A.I.D. finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aide in such determination, the Office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the Federal Register, Doc. 79–36221.

Annual Reporting Burden: Respondents: 85; annual responses: 1; average hours per response: 12; burden hours: 1,020.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 1991.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 91-17615 Filed 7–24–91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31897]

The Central Railroad Co. of Indiana; Acquisition and Operation Exemption; Lines of Consolidated Rail Corp.

The Central Railroad Company of Indiana (CRI), a non-carrier, has filed a notice of exemption to acquire and operate: (1) 85.4 miles of rail line between Cincinnati, OH and Shelbyville, IN owned by Consolidated Rail Corporation (Conrail); and (2) 76.3 miles of overhead trackage rights between Shelbyville and Frankfort, IN over lines owned by Conrail.[1] The lines to be purchased are described as follows: *Shelbyville Secondary Track*—MP 0.0 in Cincinnati to MP 81.0 in Shelbyville; *Lawrenceburg Industrial Track*—MP 22.4 at Lawrenceburg Junction to MP 26.3 at Lawrenceburg; *Greensburg Industrial Track*—MP 222.4 to MP 223.6 in Greensburg; and *Westport Industrial Track*—MP 223.7 to MP 225.0 in Greensburg. The trackage rights are: *Shelbyville Secondary Track*—MP 81.0 in Shelbyville to MP 109.3 in Indianapolis; *St. Louis Line*—MP 0.0 to MP 1.1 in Indianapolis; *Crawfordsville Secondary Track*—MP 0.7 in Indianapolis to MP 12.6 at Clermont; and *Logansport Secondary Track*—MP 0.0 at Clermont to MP 35.5 at Frankfort.[2]

The transaction is related to an exemption petition filed concurrently in Finance Docket No. 31896, *Central Properties, Inc.—Control—The Central R. Co. of Indianapolis and The Central R. Co. of Indiana.* In that proceeding, Central Properties, Inc., seeks an exemption to acquire common control of CRI and an existing Class III rail carrier. CRI expects to consummate its acquisition from Conrail within 10 days after the Commission serves a decision in the related control proceeding, or on August 1, 1991, whichever is later.

Any comments must be filed with the Commission and served on: Carl M. Miller, 2270 Lake Avenue, Suite 270, Fort Wayne, IN 46805.

CRI must preserve intact all sites and structures 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17704 Filed 7–24–91; 8:45 am]

BILLING CODE 7035-01-M

[1] CRI estimates that its annual operating revenue will fall within the level of a Class III railroad.

[2] It appears that CRI's mileage description of the involved rail properties does not coincide with the total miles of line and trackage rights it indicated it will acquire from Conrail. CRI should notify this office if there is a discrepancy in its line description or mileage figures. If so, a corrected notice will be published.

[3] CRI certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old or older that will be subject to the transaction.

[Finance Docket No. 31536]

Greenwood Island Terminal Railroad, Jackson County, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Jackson County Port Authority, doing business as the Greenwood Island Terminal Railroad, petitioned the Interstate Commerce Commission (Commission) for exemption authority to construct a 2.3 mile rail line in Pascagoula, Mississippi. The proposed line would link a planned bulk cargo terminal on Greenwood Island, near Pascagoula, with an existing CSX Transportation, Inc. (CSXT) branch line and CSXT's Mobile, AL to New Orleans, LA mainline. The purpose of the proposed construction is to provide the proposed bulk cargo terminal with rail linkage to CSXT and the national rail system. This petition was conditionally granted in Finance Docket No. 31536 in a decision served August 24, 1990, subject to completion of the Commission's environmental review and a further decision.

The Commission has prepared its environmental assessment which concludes that the proposed action, subject to the recommended conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comment to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by August 25, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31536, Jackson County Port Authority d/d/a Greenwood Island Terminal Railroad, Jackson County, Mississippi, to:

(1) Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Phillis Johnson-Ball, and one copy of the comments to:

(2) Petitioner's representative: John D. Heffner; 1700 K Street NW., suite 1107; Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 275–7659 or Elaine K. Kaiser, Chief, Section of Energy and Environment (202) 275–0804. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275–7684. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17703 Filed 7-24-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Kem-pest Site* (E.D. Mo.) 90-11-2-500 was filed in the United States District Court for the Eastern District of Missouri on July 11, 1991, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located northeast of Cape Girardeau, Missouri known as the "Kem-pest Laboratories, Inc." The complaint alleged, among other things, that the defendant is a person who owned or operated a facility at which hazardous substances were disposed of, and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances from the Site.

The proposed consent decree provides that defendants will pay to the United States $440,000 and will consent to a CERCLA lien on the Site. The proposed settlement also contains a waiver of future liability based on defendants' ability to pay.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Kem-pest Site* (E.D. Mo.) D.J. Ref. 90-11-2-500.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-17656 Filed 7-24-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Watkins-Johnson Co.

In accordance with Departmental Policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Watkins-Johnson Company,* Civil Action No. C 92 20423 SW (N.D. Cal.), was lodged with the United States District Court for the Northern District of California on July 16, 1991. This action was brought under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides that defendant Watkins-Johnson Company will clean up the Watkins-Johnson Superfund Site as required by the Record of Decision issued by the U.S. Environmental Protection Agency on June 29, 1990, pay $150,000 of the past response costs incurred by the U.S. Environmental Protection Agency, and pay all future response and oversight costs incurred by the U.S. Environmental Protection Agency.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Watkins-Johnson Company.,* D.O.J. Ref. No. 90-11-3-729.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of California, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

A copy of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, telephone number (202) 347-2072. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Consent Decree package consists of a 76 page consent decree and 57 pages of appendices. Please specify in the request whether or not appendices are requested. A request for a copy of the proposed Consent Decree with appendices shall be accompanied by a check in the amount of $33.25 (25 cents per page reproduction charge) payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $19.00 to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-17654 Filed 7-24-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./Nexus Engineering Corp./General Instrument Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Nexus Engineering Corp. ("NEXUS") and General Instrument Corporation ("GI") on June 27, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, Suite 500, Boulder, Colorado 80302

Nexus Engineering Corp., 7000 Lougheed Highway, Burnaby, British Columbia, Canada

General Instrument Corporation, 2200 Byberry Road, Hatboro, Pennsylvania 19040

The area of planned activity is cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information related to the functions and architecture of personal communications networks and cooperation in the conduct of radio frequency tests in connection with experimental personal communications networks licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-17655 Filed 7-24-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Benefits Review Board; New Address

The Benefits Review Board announces that effective August 5, 1991, the Board's operation will be moved to a new location in the Tech World complex next to the DC Convention Center. The new address and phone numbers, effective August 5, 1991, will be:

Benefits Review Board, U.S. Department of Labor, 800 K Street, NW., Suite 500, Washington, DC 20001-8001.

General Information/Case Inquiries—(202) 633-7500.

Executive Counsel/Clerk of the Board—(202) 633-7503.

Interested parties and appellants are hereby notified of the new address and phone numbers for all matters filed with the Board and for all inquiries concerning any matter before the Board on or after August 5, 1991.

The Department of Labor is in the process of amending its regulations in the *Code of Federal Regulations* to reflect this new address at 20 CFR 801.303, 802.204.

FOR FURTHER INFORMATION CONTACT: Lisa L. Lahrman, Executive Counsel, Clerk of the Board at (202) 653-5060 through August 2, 1991; (202) 633-7503 on or after August 5, 1991.

Signed this 18th day of July, 1991.

Betty J. Stage,

Chairman of the Board, Chief Administrative Appeals.

[FR Doc. 91-17662 Filed 7-24-91; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies "B" Section) to the National Council on the Arts will be held on August 15-16, 1991 from 9 a.m.-9 p.m. and August 17 from 9 a.m.-6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 17 from 3:30 p.m.-6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 15-16 from 9 a.m.-9 p.m. and August 17 from 9 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-17701 Filed 7-24-91; 8:45 am]

BILLING CODE 7537-01-M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies "A" Section) to the National Council on the Arts will be held on August 12-13, 1991 from 9 a.m.-9 p.m. and August 14 from 9 a.m.-6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 14 from 3:30 p.m.-6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 12-13 from 9 a.m.-9 p.m. and August 14 from 9 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-

5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-17702 Filed 7-24-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 26, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* Mark Chappell, Biology Department, University of California, Riverside, CA 92521.

Activity for which permit requested. Taking, import into USA. The applicant is conducting research on reproductive effort and foraging activity in Adelie penguins. He requests permission to band a total of 500 birds (200 adults, 300 chicks). In addition, he requests permission to sacrifice for tissue sampling up to 10 injured birds. Other studies involve 50 chicks to be examined in laboratory studies of metabolic rates, salt and water balance, and nitrogen excretion. These chicks would be returned to the colonies unharmed after the experiments. Time-depth recorders would be temporarily attached to 50 adult birds to study diving behavior. Doubly-labeled water studies of 75 adults and 30 chicks would be performed. These specimens would be returned unharmed after the experiments. Other experiments involve measurement of total body water. A maximum of 25 chicks would be sacrificed for experiments on osmoregulation, energy utilization and material budgets. The applicant also requests permission to import tissue samples, blood and other body fluids to the US for further analysis.

Location: Vicinity of Palmer station, Antarctica.

Dates: October 1991-April 1992.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-17636 Filed 7-24-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors Review of the Teacher Preparation Program.

Date and Time: August 15, 1991; 1 to 5 p.m. August 16, 1991; 8 a.m. to 5 p.m.

Place: Room 638A, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Miriam Levia or Ms. Lois Nicholson, Program Directors, Room 638, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-7069.

Purpose of Meeting: To provide oversight review of the Teacher Preparation Program within the Division of Teacher Preparation and Enhancement.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-17700 Filed 7-24-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources: Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors Review of the Minority Research Centers of Excellence (MRCE) Program

Date and Time: August 14-15, 1991; 8 a.m. to 5 p.m.

Place: Room 1243, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Ms. Griselio P. Moranda, Program Analyst or Dr. Roosevelt Calbert, Section head, Division of Human Resource Development, Room 1225, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7552

Purpose of Meeting: To provide oversight review of the Minority Research Centers of Excellence (MRCE) Program within the Division of Human Resource Development.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reasons for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-17699 Filed 7-24-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public

meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 20, 1991 (56 FR 28420). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

AC/DC Power Systems Reliability, July 30, 1991, Bethesda, MD. The Subcommittee will discuss the implementation status of the station blackout rule for current operating plants.

AC/DC Power Systems Reliability, July 31, 1991, Bethesda, MD. The Subcommittee will discuss adoption of the N+2 concept for systems which are actuated to perform safety functions for future nuclear plants (GE, *W*, CE and EPRI).

Advanced Reactor Designs, August 6, 1991, Bethesda, MD. The Subcommittee will review the modular high-temperature gas cooled reactor (MHTGR) and the power reactor innovative small module (PRISM) designs sponsored by DOE.

Extreme External Phenomena, August 7, 1991, Bethesda, MD. The Subcommittee will discuss the results of the Diablo Canyon Long-Term Seismic Reevaluation Program.

Instrumentation and Control Systems, August 29, 1991, Bethesda, MD. The Subcommittee will discuss EPRI's reactor set-point methodology for future designs and the Transient Response Implementing Plan (TRIP) procedures.

Advanced Pressurized Water Reactors, September 4, 1991, Bethesda, MD. The Subcommittee will continue its review of the CE System 80+ Standard Plant with a detailed look at the NUPLEX 80+ Advanced Instrumentation and Control System design and the Probabilistic Risk Assessment as applied to this new design.

Improved Light Water Reactors, September 17, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to Chapters 1 and 10 of the EPRI's Requirements Document for Evolutionary Designs.

Advanced Boiling Water Reactors, September 18, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to Chapters 1, 2, 3, 4, 5, 6, and 17 of the GE Standard Safety Analysis Report.

Severe Accidents, October 24–25, 1991, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Regional Programs, November 13–14, 1991 (tentative), NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

Thermal Hydraulic Phenomena, Date to be determined (Fall, tentative), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined, Bethesda, MD. The Subcommittee will continue its review of the issues pertaining to BWR core power stability.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Regulatory Activities, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed final resolution of Generic Safety Issue-113, "Dynamic Qualification Testing of Large Bore Hydraulic Snubbers."

Occupational and Environmental Protection Systems (tentative), Date to be determined, Bethesda, MD. The Subcommittee will review certain regulatory guides related to the implementation of the revised 10 CFR part 20 rule.

Systematic Assessment of Experience, Date to be determined, Bethesda, MD. The Subcommittee will discuss the safety significance of the lessons learned from the operating experience with solenoid-operated valves (SOVs). Also, it will discuss the comments received from the Nuclear Utility Group on Equipment Qualification regarding the AEOD's findings on SOV problems at U.S. nuclear power plants.

Thermal Hydraulic Phenomena, Date to be determined, Los Alamos, NM. The Subcommittee will review the documentation associated with the TRAC–PF1/MOD2 code version.

ACRS Full Committee Meetings

376th ACRS Meeting, August 8–10, 1991, Bethesda, MD. Items are tentatively scheduled.

A. *Reactor Operating Experience (Open)*—Briefing and discussion of events and incidents that have occurred at nuclear facilities, including the recent loss of off-site power event at the Vermont Yankee Nuclear Power Station. Representatives of the NRC staff and the industry will participate, as appropriate.

B. *NRC Safety Research Program (Open)*—Discussion of the scope and nature of a proposed report to the Commission on the NRC safety research program.

C. *Diablo Canyon Nuclear Power Station (Open)*—Review and report on the results of the long-term seismic reevaluation program for this nuclear station. Representatives of the licensee and the NRC staff will participate, as appropriate. A Committee report may result from this session.

D. *Nuclear Power Plant Operator Requalification Program (Open)*—Briefing and discussion regarding the impact of symptom-based operating procedures on the requalification of nuclear power plant licensed operators.

E. *ACRS Plans for the Review of Evolutionary and Advanced Reactor Plants (Open)*—Discussion of plans and procedures for conduct of ACRS reviews of the evolutionary and advanced LMR designs, including the GE ABWR design.

F. *NRC Regulatory Impact Survey (Open)*—Review and report on the NRC staff's proposed corrective actions resulting from the NRC regulatory impact survey (SECY–91–172, Regulatory Impact Survey Report, Final). Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

G. *San Onofre Nuclear Generating Station Unit No. 1 (Open)*—Review and report on the proposed conversion of a

provisional operating license to a full-term operating license for this nuclear unit. Representatives of the NRC staff and the licensee will participate, as appropriate. A Committee report may result from this session.

H. *Station Blackout Rule (Open)*—Briefing and discussion regarding the status of implementation of the Station Blackout Rule. Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

I. *AC/DC Power Systems Reliability (Open)*—Briefing and discussion regarding adoption of the "N+2" concept for systems which are actuated to perform safety functions for future plants. Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

J. *Key Technical Issues for Future Nuclear Plants (Open)*—Discussion of items in need of early resolution with respect to future nuclear power plant designs and a proposed course of action to address them.

K. *ACRS Subcommittee and Members Activities (Open)*—Reports about and discussion regarding the status of designated Subcommittee activities. Also, discussion regarding activities of individual Committee members.

L. *Anticipated Committee Activities (Open)*—Discussion of anticipated ACRS Subcommittee activities, items proposed for consideration by the full Committee, and administrative matters related to the conduct of Committee business.

M. *Proposed Reports to NRC (Open)*—Discussion of proposed reports to the NRC regarding items considered during this meeting.

N. *Miscellaneous (Open)*—Complete discussion of items that were not completed during previous ACRS meetings as time and availability of information permit, including the proposed resolution of Generic Issue-130, Essential Service Water System Failures at Multi-Unit Sites.

377th ACRS Meeting—September 5–7, 1991—Agenda to be announced.

378th ACRS Meeting—October 10–12, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

34th ACNW Meeting, August 28–29, 1991, Bethesda, MD. Items are tentatively scheduled.

A. The State of Nevada will be invited to present a summary and discussion of the State's review and comments on DOE's Site Characterization Plan and related Study Plans.

B. DOE will be invited to present a summary and discussion of the DOE responses to comments by EPA, NRC, and the State of Nevada on the Yucca Mountain Site Characterization Plan.

C. The NMSS HLW staff will present the results of the review of DOE's responses to the NRC staff's Site Characterization Analysis.

D. The NMSS HLW proactive program will be presented. This involves planned rulemakings, guidelines, and technical positions in support of the HLW program.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

35th ACNW Meeting, September 25–27, 1991—Agenda to be announced.

36th ACNW Meeting, October 23–24, 1991—Agenda to be announced.

37th ACNW Meeting, November 20–21, 1991—Agenda to be announced.

38th ACNW Meeting, December 18–19, 1991—Agenda to be announced.

ACNW Working Group on Preparation of Regulatory Guides for Implementing Revisions to 10 CFR part 20, August 20–22, 1991, Bethesda, MD—Postponed.

ACNW Working Group on NRC staff Computer Modeling and Performance Assessment Capabilities in High-Level Waste, September 11–13, 1991. The Working Group will review the NRC staff's capabilities to make independent evaluations of licensee proposals with respect to the performance of high-level radioactive waste disposal facilities. Emphasis will be placed on computer capabilities involving modeling, documentation, verification and validation.

ACNW Working Group on Geologic Dating, October 22, 1991, Bethesda, MD—Postponed.

ACNW Working Group on Residual Contamination Clean-up Criteria, October 25, 1991, Bethesda, MD. The Working Group will review the clean-up criteria for unrestricted use of contaminated sites that have been, or were at one time, under AEC or NRC license. The NRC staff is in the process of determining acceptable levels for uranium- and thorium- contaminated soils and structures to be released for unrestricted use.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, November 19, 1991, Bethesda, MD. The Working Group will review the potential long-range climate changes and their impact on performance assessments of a proposed high-level repository.

ACNW Working Group on Post-Closure Monitoring, November 22, 1991, Bethesda, MD. The Working Group will review the potential problems and possible limitations associated with the post-closure monitoring of a proposed high-level waste repository. The potential utilization of non-invasive methods for the attainment of such a capability as well as the duration of such monitoring, and significance and impact of results will also be considered.

ACNW Working Group on Inadvertant Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, December 17, 1991, Bethesda, MD. The Working Group will review the methodologies for assessment of the potential for natural resources at a proposed high-level waste site.

ACNW Working Group on NRC staff Computer Modeling and Performance Assessment Capabilities in Low-Level Waste, Date to be determined, Bethesda, MD.

Dated: July 19, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–17669 Filed 7–24–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ambac, Inc.
Common Stock, $0.01 Par Value (File No. 7–7090)
Banyan Mortgage Investment Fund
Common Stock, $0.01 Par Value (File No. 7–7091)
Calgon Carbon Corp.
Common Stock, $0.01 Par Value (File No. 7–7092)
Continental Medical Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7–7093)
Fisher Price, Inc.
Common Stock, $0.01 Par Value (File No. 7–7094)

Fruehauf Trailer Corp.
Common Stock, $0.01 Par Value (File No. 7-7095)
Harley-Davidson, Inc.
Common Stock, $0.01 Par Value (File No. 7-7096)
International Specialty Products, Inc.
Common Stock, $0.01 Par Value (File No. 7-7097)
Mutual Risk Management, Ltd.
Common Stock, $0.01 Par Value (File No. 7-7098)
Nuveen Quality Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7099)
Ruddick Corp.
Common Stock, $1.00 Par Value (File No. 7-7100)
Spaghetti Warehouse, Inc.
Common Stock, $0.01 Par Value (File No. 7-7101)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authroity.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17623 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Telecom Corporation of New Zealand Limited
American Depositary Shares (each representing 20 Ordinary Shares, NZ $1.00 Par value) (File No. 7-7102)
Barr Laboratories, Inc.
Common Stock, $.01 Par Value (File No. 7-7103)
Enquirer/Star Group, Inc.
Common Stock, $.001 Par Value (File No. 7-7104)
Escagenetics Corporation
Common Stock $.0001 Par Value (File No. 7-7105)
Exel, Inc.
Ordinary Shares $.001 Par Value (File No. 7-7106)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17624 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29451; File No. SR-NASD-91-16]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Suspension and Cancellation of Associated Person's Registration as a Result of Failure to Pay Dues, Fees, or Assessments Charged by the Association

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1991 [1], the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] On July 12, 1991, the NASD filed Amendment No. 1 to the proposed rule change, in response to a request of the Commission staff. Amendment No. 1 clarifies the language of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Article VI, Sections 3 and 4 of the NASD By-Laws. The NASD proposes to amend its By-Laws to provide for the suspension or cancellation of the registration of an associated person in the event of non-payment of fees, dues, or assessments. Below is the text of the proposed rule change. Proposed new language is italicized.

Article VI

Dues, Assessments and Other Charges

* * * * *

Suspension or Cancellation of Membership or Registration for Non-Payment of Dues

Sec. 3. The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports requested pursuant to section 2 of this Article.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the Corporation upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Corporation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of By-Laws provides the Board of Governors with the authority to charge fees, dues and assessments to members, issuers, and persons using facilities and systems operated or controlled by the NASD. Many of these fees are described in Schedule A of the NASD By-Laws and include such things as examination fees, annual assessments, and fees for filing various documents with the NASD. Section 3 of Article VI of the By-Laws currently authorizes the NASD, after providing written notice pursuant to article VI of the Code of Procedure, to suspend or cancel the membership of any member which fails to pay any fees, dues, assessments or other charges. Failure to pay forum fees associated with the arbitration process operated by the NASD may result in the suspension or cancellation of a firm's membership. Section 3, however, does not apply to associated persons who fail to pay fees, dues, or assessments.

While section 2 of Article V of the Rules of Fair Practice authorizes the NASD, after providing written notice, to revoke the registration of an associated person who has failed to pay any fine or cost imposed in connection with disciplinary proceedings or proceedings conducted under the Code of Procedure, no provision of the NASD's By-Laws, Rules of Fair Practice, Code of Arbitration Procedure, or Code of Procedure provides for the suspension or cancellation of an associated person's registration for the failure to pay arbitration forum fees. Moreover, the number of associated persons who fail to pay forum fees is increasing.[2]

The language of the rule change, although proposed primarily to permit the Association, after providing fifteen days notice, in writing, to suspend or cancel the registration of any individual who remains delinquent in the payment of arbitration forum fees, is sufficiently broad to encompass other instances in which associated persons have failed to pay fees, dues, assessments or other charges owed for the use of facilities or systems operated or controlled by the NASD. The NASD, therefore, believes that this rule change is warranted to protect the integrity of the arbitration process and the marketplace, and to provide uniformity in the treatment of associated persons failing to pay fees.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), (b)(7), and (b)(8) of the Act. Pursuant to section 15A(b)(6), the proposed rule change will assist in removing impediments to and perfecting the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Sections 15A(b)(7) and (b)(8) require that the rules of a national securities association include provisions to assure that members and persons associated with members be appropriately and fairly disciplined for violations of any provision of the Act, the rules and regulations promulgated thereunder, the MSRB Rules, or the Association's Rules. The proposed change will conform the treatment of associated persons in arrears in the payment of any dues, fees, or other charges with the existing standard of treatment of associated persons who fail to pay fines and costs in connection with disciplinary and other proceedings held pursuant to the Code of Procedure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority 17 CFR 200.30–3(a)(12).

Dated: July 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17638 Filed 7–24–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29444; File No. SR–NSCC–91–03]

July 16, 1991

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Revising Standards for Approved Issuers of Letters of Credit for Clearing Fund Purposes

On April 17, 1991, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will modify NSCC's rules relating

[2] On May 7, 1991, in File No. SR–NASD–90–62, the commission approved a new Section 41(g) to the NASD's code of Arbitration Procedure. See Securities Exchange Act Release No. 29166 (May 7, 1991), 56 FR 22029 (May 13, 1991). The new section provides that fees and assessments imposed by arbitrators under Sections 43 and 44 of the code are immediately payable upon receipt of the award.

to the standards by which NSCC approves issuers of letters of credit used for clearing fund purposes. Notice of the proposal was published in the **Federal Register** on May 13, 1991.[2] No comments were received. As discussed below, the Commission is approving NSCC's proposal.

I. Description

The proposed rule change will modify NSCC's standards by which they approve letters of credit used for clearing fund purposes. These standards, which have basically not been changed since they were adopted in 1980, seek to ensure the creditworthiness and liquidity of the issuing financial institution. The new standards are proposed to go into effect, promptly upon Commission approval of this proposed rule change.[3]

NSCC's rules require members to contribute deposits to the clearing fund, in an amount based in large part upon the member's use of the clearance facilities. As much as 70% of a member's required deposits may be collaterized using letters of credit that are issued by an NSCC approved lender.[4]

NSCC's proposed standards for clearing fund letter of credit issuers would include both size and credit rating criteria. Under the proposed rules, to qualify as an issuing bank, any foreign or domestic bank must have:

(1) either (a) $300 million in total shareholders' equity and a short-term obligations rating of not less than A-2 or P-2, or (b) $150 million in total shareholders' equity and a short-term obligations rating of not less than A-1 or P-1, *and* (2) its letters of credit be able to be readily pledged by NSCC, pursuant to a line of credit arrangement establishment by NSCC as collateral to obtain credit in an amount equal to at least 80 percent of stated value.

The relevant short-term ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company. In addition, a bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A-2 or P-2. A "split" rating of A-2/P-3 or P-2/A-3 will not be acceptable.[5] The maximum maturity for a letter of credit issued for clearing fund purposes will remain one year under the proposed rule change.[6]

NSCC will require each issuing bank to confirm periodically that it complies with the applicable capital standards established by each of its regulatory authorities.[7] NSCC will also subscribe to a financial reporting service, such as Moody's or Standard and Poor's, for periodical reports on each issuer. Also, any foreign bank, acting through a branch or agency in the United States, may not be approved as a letter of credit issuer unless a sufficient guarantee or performance of such branch or agency is received by NSCC from such bank.

II. Discussion

The Commission believes that NSCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes NSCC's proposal "promotes the prompt and accurate clearance and settlement of securities transactions" and assures "the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible." [8]

The proposal helps to ensure that the letters of credit which members can deposit with NSCC (in partial satisfaction of their clearing fund contribution requirements) are issued by sufficiently creditworthy and liquid financial institutions to maintain the clearing fund's own creditworthiness and liquidity. The creditworthiness of the clearing fund helps to assure that NSCC will be able to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to NSCC.

The new issuer standards will help to ensure the liquidity of NSCC's clearing fund and NSCC's ability to meet sudden or unanticipated requirements for cash to address, for example, a pending member default. The additional requirement that letters of credit must be acceptable as collateral to NSCC's line of credit banks further this goal. By requiring both a minimum size and a minimum credit rating by Standard and Poor's or Moody's these new standards avoid the potential problems of requiring only one of these criteria for approval as the prior standards did.[9] As

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29159 (May 3, 1991), 56 FR 22030.

[3] Upon the new standards taking effect, NSCC will notify each approved issuer of the new standards and mail to each of them a proposed Letter of Credit Issuer Agreement ("Agreement"), requiring compliance with these new standards. Each such issuer will then have ninety days to execute the Agreement, stating compliance with these new standards. Failure to execute this Agreement, in a form satisfactory to NSCC will prevent an issuer from being approved.

Thereafter NSCC will notify each member that has posted as clearing fund collateral a letter of credit from an issuer that does not meet these new standards (and which the Board of Directors has not specifically exempted from compliance with the new standards) that it must replace such letter of credit, within a time period that will be no more than 60 days from such notice, with either a letter of credit from an approved issuer or other eligible collateral. See letter from Jeffrey Ingber, Associate General Counsel NSCC to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated July 9, 1991.

As of April 17, 1991, one letter of credit issuer had a P-3 short-term rating from Moody's and the other approved issuer had no short term credit rating. As of that date NSCC had only two letters of credit on deposit from the latter letter of credit issuer, with an approximate face value of $1 million.

Within ninety days of the date of this order, if either or these issuers, respectively, has not met these new issuer standards, and the Board of Directors of NSCC has not specifically exempted such issuer from these new standards, outstanding letters of credit issued by either of these non-qualifying issuers., respectively, will no longer be accepted by NSCC as collateral for clearing fund purposes.

[5] A-1, A-2, A-3 and P-1, P-2, P-3 are credit ratings issued, respectively, by Standard and Poor's Corporation and Moody's Investor Service, Inc., to recommend the creditworthiness of various financial institutions with regard to certain financial obligations. These agencies may look at many factors, including profitability, capital, asset quality, liquidity and management before assigning a rating to the obligations of a financial institution.

[6] The proposal would not change three other requirements. First, NSCC will not accept a letter of credit issued by an approved issuer, if, as a result more than 20% of NSCC's clearing fund will consist of letters of credit from such issuer. Second, NSCC's Board of Directors will retain the authority in its discretion, to determine that a particular issuer, because of circumstances specific to that issuer, may not either begin or continue to issue letters of credit used for clearing fund purposes, even if such issuer otherwise qualifies as an issuer under the proposed standards. Third, the Board of Directors will continue to have the authority to accept letters of credit issued by banks that do not meet the new standards, provided the letters of credit issued by such banks do not exceed one-half of 1% of the total clearing fund deposits of all participants.

[7] Among the provisions of the Letter of Credit Issuer Agreement will be an affirmative obligation on the part of each issuer to promptly inform NSCC if such issuer fails in any way to comply with the new issuer standards. Each issuer will also have to supply NSCC with quarterly and annual financial statements so NSCC can examine each issuer's creditworthiness. Telephone conversation between Jeff Ingber, Attorney, NSCC, and Jack Drogin, Attorney, Commission (July 1, 1991).

[8] Section 17A(b)(3)(F) of the Act, 15 U.S.C. 78q-1(b)(3)(F).

[9] Under the prior standards, a domestically chartered bank must either: (1) Be permitted to lend at least $10 million to any individual participant of NSCC, in accordance with applicable state or federal law; or (2) have either an A-1 commercial paper rating (by Standard and Poor's Corporation) or a P-1 commercial paper rating by (by Moody's Investor Service, Inc.). The board of NSCC could still permit a domestically chartered bank which failed to meet either of these standards to issue approved letter of credit, but the total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

A United States branch of a foreign bank, one organized under the laws of a foreign country, could also issue approved letters of credit under the prior rules, if: (1) such bank had an A-1 or P-1 rating for letters of credit issued to support commercial paper or similar short term obligations; or (2) such bank's parent had worldwide consolidated bank assets exceeding $1 billion. If such foreign bank did not meet either of these standards, the board of NSCC could permit it to issue approved letters of credit pursuant to such conditions as the board might decide. The total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

compared with the prior standards, these new standards are significantly more stringent.[10]

The $300 million equity/top two short-term obligations rating standard would ensure that only a domestic bank that is among roughly the 100 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative $150 million equity/top short-term obligations rating would allow roughly the 200 largest banks with a top short-term obligations rating to be approved letter of credit issuers. This allows for substantial competition among letter of credit issuers.

NSCC's Board of Directors will continue to have discretion to accept a letter of credit issued by a bank that does not meet either of these standards. To limit NSCC's exposure, however, the letters of credit issued by any such bank cannot exceed ½ of 1% of the total clearing fund deposits of all participants.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NSCC-91-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17691 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29445; File No. SR-OCC-91-12]

Self-Regulatory Organization; The Options Clearing Corp.; Proposed Rule Change Relating to Modification of the Short Option Adjustment

July 17, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on June 20, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the short option adjustment included within OCC's margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the "short option adjustment" contained in OCC's margin system (the Theoretical Intermarket Margin System ("TIMS")) as reflected in OCC Rule 601 for equity options and Rule 602 for non-equity options.

Background

OCC requires its clearing members to adjust their margin deposits with OCC in the morning on every business day, pursuant to calculations performed by OCC overnight. OCC imposes a margin requirement on short positions in each clearing member's account, and gives margin credit in respect of unsegregated long positions.[1] Under TIMS, the margin requirement or credit for positions in a "class group" (a "class group" consists of all put and call options [2] relating to the same underlying interest) in a given clearing member account is equal to the liquidating value of those positions, based on premium levels at the close of trading on the preceding trading day, increased (in the case of a negative liquidating value) or decreased (in the case of a positive liquidating value) by the additional margin amount for that class group.

TIMS calculates additional margin amounts utilizing options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable "margin interval," which is the maximum one-day price movement in the underlying asset that OCC desires to protect against.[3] Margin intervals are determined separately for each underlying interest and each margin interval is adjusted for volatility in the market for the underlying interest.

TIMS then selects the theoretical liquidating that represents the greatest decrease (where the actual liquidating value if positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and actual liquidating value is the additional margin amount for that class group, unless the class group is subject to the short option adjustment.

For net short positions [4] in deep out-of-the-money options, little or no change in value would be predicted given a chance in value of the underlying interest equal to the applicable margin interval, and TIMS would calculate additional margin amounts zero or close to zero. Volatile markets, however, may

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[10] The National Bank Act, 12 U.S.C. 84(a), for example, limits loans by federally chartered banks to 10% of the unimpaired capital and unimpaired surplus of the banking association if fully secured, or 15% of the unimpaired capital and unimpaired surplus of the banking association if not fully secured.

[1] A long position is "unsegregated" for OCC's purposes if OCC has a lien on the position, *i.e.*, has recourse to the value of the position in the event that the clearing members does not perform an obligation to OCC. Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' accounts are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[2] In the case of Rule 602, a class group also consists of market futures which are subject to margin at OCC because of a cross margining program with a commodity exchange, and, upon the Commission's approval of File No. SR-OCC-91-05, Index Participations ("IPs") relating to the same underlying interest.

[3] TIMS also calculates the theoretical liquidating value for the positions in each class group assuming an increase or decrease in the market value of the underlying asset such that the market value equals any exercise price falling between the market value plus the margin interval and the market value minus the margin interval, since some combinations of positions can present a greater net theoretical liquidating value at any of these intermediate values than at either of the endpoint values

[4] A "net" position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position, a net long position or a flat position (if the gross unsegregated long position equals the gross short position) for each series of options held in the account.

cause such positions to become in-the-money or nearly so, thereby creating increased risk to OCC. OCC protects against such risk by incorporating into the additional margin calculation of TIMS a margin cushion, known as the short option adjustment, in respect of such positions. The short option adjustment is described in Rule 601(c)(1)(C)(1) for equity options and Rule 602(c)(1)(ii)(C)(1) for non-equity options.

The short option adjustment currently calculates a minimum additional margin amount for all net short positions in deep out-of-the-money options. That additional margin amount is equal to 25% of the applicable margin interval, multiplied by the number of contracts and the applicable unit of trading. The short option adjustment component of additional margin is activated only if the calculated additional margin requirement for an option series is less than 25% of the applicable margin interval.

Effect of the Short Option Adjustment

Following an analysis of its experiences in the October 1987 Market Break and other internal reviews of TIMS, OCC has concluded that the current short option adjustment requires clearing members to deposit margin in excess of the risk presented by certain net short positions in deep out-of-the-money options.

This over-collateralization occurs because the current short option adjustment does not account for spreads between net long and short positions on the same underlying interest. That is, it does not attempt to match net short positions with the net long positions which substantially reduce, or eliminate, the risk of such net short positions. When paired, the positions offset one another, in that as the risk created by the net short positions increases, the value of the long positions also increases. The paired positions therefore pose little or no risk to OCC.[5] Because the short option adjustment does not recognize these paired contracts, margin on the positions is calculated as if they were "unpaired" or "naked." Accordingly, the additional margin required of clearing members for these positions is in excess of their net risk.

Modified Short Option Adjustment

To eliminate this over-collateralization, OCC proposes to revise the short option adjustment logic of TIMS so that it recognizes spreads between net long and short contracts on the same underlying security or interest. Accordingly, TIMS would be modified so that the short option adjustment would "pair" all net long contracts relating to an underlying interest against all net short contracts relating to the same underlying interest on a contract for contract basis. Should any net short positions remain after this process, the number of remaining net short option contracts would be subject to the short option adjustment.[6]

To determine which contracts would be subject to the short option adjustment, OCC would select that number from all net short contracts for which TIMS (in the absence of the short option adjustment) calculates the lowest amount of additional margin, thereby resulting in greater risked-based margin coverage in respect of such unpaired, net short option contracts. Accordingly, this selection process will ensure that the short option adjustment is applied in a manner which most effectively protects OCC.

As is currently the case, the modified short option adjustment would be applied only if the calculated additional margin requirement for a short option is less than 25 percent of the margin interval. The modified short option adjustment would continue to use the formula that is currently employed to determine the amount of the adjustment for those contracts that are subject to the adjustment.

The proposed rule change is consistent with section 17A of the Act, because it furthers the public interest by eliminating the over-margining of certain short positions in deep out-of-the-money options, where the risk of such positions is offset by long positions in the same class group. Thereby, an impediment to market liquidity will be removed, without reducing OCC's protection with respect to truly "naked" short positions in deep out-of-the-money options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR-OCC-91-12 and should be submitted by August 15, 1991.

[5] A pair consisting of a net short position and a net long position will pose no risk to OCC if the exercise price of the short position is higher (in the case of calls) or lower (in the case of puts) than the exercise price of the long position. Conversely, a pair consisting of a net short position and a net long position will pose a risk to OCC consisting of the difference between the exercise prices of the short position and long position is lower (in the case of calls) or higher (in the case of puts) than the exercise price of the long position. However, this risk is of a relatively small magnitude and not open-ended—*i.e.*, cannot be greater than the difference between the two exercise prices times the applicable unit of trading or index multiplier and the number of contracts. OCC is satisfied that its existing back-up system is capable of absorbing this relatively small risk without any short option adjustment.

[6] For purposes of Rule 602, commodity options and futures held in cross-margin accounts, market-baskets, and (upon approval by the Commission of File No. SR-OCC-91-05), IPs also would be included in such contract spreading. Specifically, long calls, futures, commodity calls, market baskets and IPs would be netted against short calls and commodity calls. Long puts and commodity puts and short futures, market baskets and IPs would be netted against short puts and commodity puts. Those net short options which remain after such netting would be subject to the short option adjustment.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17687 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18240; File No. 811-5859]

F&G Life Variable Annuity Account

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: F&G Life Variable Annuity Account.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Nancy M. Rappa, Senior Attorney, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant, organized as a unit investment trust, is a separate investment account of Fidelity and Guaranty Life Insurance Company ("F&G Life") established under the insurance laws of the State of Maryland.

2. The Applicant filed a notice of registration under the 1940 Act and a Form N-4 registration statement on September 18, 1989. The registration statement pertains to units of interest under F&G Life's variable annuity policies ("Policies"), which were funded through the Applicant. The registration statement became effective on January 4, 1990 and the initial public offering commenced on January 24, 1990.

3. Sales of the Policies were lower and the costs per Policy owner of offering and maintaining the Policies were higher than originally anticipated by F&G Life. As a result, the Applicant's assets did not increase as anticipated and expense ratios of the U.S. Eagle Fund, Inc., the designated investment medium of the Applicant, did not decline. This made the Policies less advantageous from the standpoint of both F&G Life and Policy owners.

4. Accordingly, sales of new Policies were suspended on January 31, 1991, and, pursuant to authorization granted by the Maryland Insurance Department, F&G Life stopped accepting premium payments under the Policies on March 14, 1991. F&G Life mailed to all Policy owners a letter, dated March 14, 1991, that described the various alternatives available to Policy owners. The alternatives described in each form of the letter were identical in all material respects, except to the extent necessary to distinguish for tax purposes between non-qualified, IRA and other qualified Policy owners for tax purposes. The second option, as described below, was not available to qualified plan Policy owners, other than IRA Policy owners.

5. The first option allowed each Policy owner to replace his or her Policy with either a single premium or flexible premium deferred fixed annuity ("Fixed Annuity") issued by F&G Life, having a specified account value equal to the account value of his or her Policy on the date of the replacement, plus, after a full year from the date of issue of the new policy, a retention bonus. In addition, Policy owners who had invested in the General Account Options under the Policy were guaranteed at least the same interest rate return if they selected the F&G Life single premium deferred Fixed Annuity by April 18, 1991. The second option allowed each Policy owner to replace his or her Policy for a different deferred annuity issued by F&G Life or another insurance company. The third option allowed Policy owners to cash out their policies for a cash payment equal to the value of the Policies as of the date of surrender. Under all three options, F&G Life waived the applicable 6% Surrender and Withdrawal Charge, state premium tax deduction, and other Policy fees and charges which otherwise would have applied upon surrender.

6. All Policy owners accepted one of the three options and all replacements and cash-outs were effected as of May 9, 1991. As a result of the replacements and cash-outs, F&G Life's obligations under the Policies were terminated, and Applicant's assets were no longer legally required to be held by the Applicant. Accordingly, F&G Life will cause these assets to be transferred to its general account. These assets, which are attributable to the initial capitalization (or earnings thereon) provided by F&G Life, consist of shares of the U.S. Eagle Fund, Inc., the designated investment medium of the Applicant.

7. The Applicant has one security holder, F&G Life, the depositor of the Applicant, as of the date of filing of this application. The Applicant has no known debts or other outstanding liabilities, and the Applicant is not a party to any known litigation or administrative proceedings.

8. The Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. All expenses incurred and to be incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by F&G Life. Each Policy owner received, pursuant to the alternatives described above, an F&G Life Fixed Annuity or a different deferred annuity with an account value, or an amount of cash, that was equal to the cash value of his or her Policy on the date of replacement or surrender, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17689 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18241; File No. 811-4874]

F&G Life Variable Life Account

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: F&G Life Variable Life Account.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Nancy M. Rappa, Senior Attorney, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant, registered as a unit investment trust under the 1940 Act, is a separate investment account of Fidelity and Guaranty Life Insurance Company ("F&G Life"). On October 16, 1986, the Applicant filed a notice of registration and a Form N–8B–2 registration statement under the 1940 Act, and a registration statement on Form S–6 under the Securities Act of 1933 (the "1933 Act"). The 1933 Act registration statement was declared on June 10, 1987. The registration statement pertains to units of interest ("Units") under the variable policies ("Policies") that were to have been issued by F&G Life and funded through the Applicant.

2. On May 6, 1987, F&G Life allocated $4,000,000 from its general account to the Applicant to facilitate the commencement of Applicant's operations. In October 1987, F&G Life invested an additional $7,000,000 in the Applicant.

3. There has been no public offering of the Policies and no sales of any classes of Units thereunder.

4. On November 22, 1989 all of Applicant's assets, which consisted entirely of capitalization (or earnings thereon) provided by F&G Life, were transferred to the general account of F&G Life in connection with the suspension of Applicant's operations and the subsequent winding up of Applicant's affairs. The Applicant, therefore, has no assets and on intention of acquiring any assets in the future.

5. The Applicant has not, within the past 18 months, transferred any of its assets to a separate trust. The Applicant has no security holders and no known debts or other outstanding liabilities, and is not a party to any known litigation or administrative proceeding.

6. The Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. All expenses incurred and to be incurred in connection with the winding up of Applicant's affairs and deregistration under the securities laws will be borne by F&G Life.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17692 Filed 7–24–91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–18242; File No. 811–4872]

U.S. Eagle Fund, Inc.

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: U.S. Eagle Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2026, or Nancy M. Rappa, Senior Attorney, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant is an open-end management investment company, registered under the 1940 Act. The Applicant filed a notice of registration under the 1940 Act and a Form N–1A registration statement on October 16, 1986.

2. The registration statement pertains to the Applicant's shares of common stock, which were offered and sold only to F&G Life Variable Annuity Account ("Separate Account") in connection with flexible premium deferred variable annuity policies ("Policies") which were funded through the Applicant and which were issued by Fidelity and Guaranty Life Insurance Company ("F&G Life").

3. The Applicant's registration statement under the Securities Act of 1933 was declared effective by the Commission on June 10, 1987. The public offering of the Policies and all classes of Applicant's shares in connection therewith commenced on January 24, 1990. However, sales of the Policies were lower and the costs per Policy owner of offering and maintaining the Policies were higher than originally anticipated by F&G Life. As a result, the Applicant's assets did not increase as anticipated and expense ratios did not decline. This made the Policies less advantageous from the standpoint of both F&G Life and Policy owners.

4. Accordingly, sales of new Policies were suspended on January 31, 1991, and, pursuant to authorization granted by the Maryland Insurance Department, F&G Life stopped accepting premium

payments under the Policies on March 14, 1991. F&G Life mailed to all Policy owners a letter, dated March 14, 1991, that described the various alternatives available to Policy owners. The alternatives described in each form of the letter were identical in all material respects, except to the extent necessary to distinguish for tax purposes between non-qualified, IRA and other qualified Policy owners. The second option, as described below, was not available to qualified plan Policy owners, other than IRA Policy owners.

5. The first option allowed each Policy owner to replace his or her Policy with either a single premium or flexible premium deferred fixed annuity ("Fixed Annuity") issued by F&G Life, having a specified account value equal to the account value of his or her Policy on the date of the replacement, plus, after a full year from the date of issue of the new policy, a retention bonus. In addition, Policy owners who had invested in the General Account Options under the Policy were guaranteed at least the same interest rate return if they selected the F&G Life single premium deferred Fixed Annuity by April 18, 1991. The second option allowed each Policy owner to replace his or her Policy for a different deferred annuity issued by F&G Life or another insurance company. The third option allowed Policy owners to cash out their Policies for a cash payment equal to the value of the Policies as of the date of surrender. Under all three options, F&G Life waived the applicable 6% Surrender and Withdrawal Charge, state premium tax deduction, and other Policy fees and charges which otherwise would have applied upon surrender.

6. All Policy owners accepted one of the available options and all replacements and cash-outs were effected as of May 9, 1991. Following the issuance of the new fixed policies and cash-outs, all of the outstanding shares of the Applicant were attributable to the initial capitalization (or earnings thereof) provided by F&G Life, through its Separate Account. Accordingly, all of the Applicant's remaining assets will be distributed to F&G Life in connection with the winding-up of Applicant's affairs. The distribution of assets was accomplished by means of a merger, under the laws of the state of Maryland, of the Applicant into F&G Life, as a result of which all of the Applicant's assets were transferred to the general account of F&G Life. No purchase price was paid in connection with such distribution of assets and no brokerage commissions were paid.

7. The Applicant has one security holder, the Separate Account, at the date of filing this application. The Applicant has no known debts or other outstanding liabilities (other than certain immaterial liabilities to be paid by the date of the merger or to be assumed by F&G Life), and is not a party to any known litigation or administrative proceedings.

8. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. All expenses incurred and to be incurred in connection with the winding-up of the Applicant's affairs have been borne and will be borne by F&G Life. Each Policy owner received, pursuant to the alternatives described above, an F&G Life Fixed Annuity, or an amount of cash, equal to the value of his or her Policy on the date of replacement or surrender, respectively, without the imposition of any charges applicable to surrender.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17699 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

FJC Growth Capital Corporation (License No. 04/04-5254); Issuance of a Small Business Investment Company License

On July 24, 1990, a notice was published in the **Federal Register** (Vol. 55, No. 142 FR 30071) stating that an application has been filed by FJC Growth Capital, Corporation with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1989)) for a license as a Small Business Investment Company.

Interested parties were given until close of business Friday, August 24, 1990, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-5254 on March 7, 1991, to FJC Growth Capital, Corporation to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 16, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-17670 Filed 7-24-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2515]

Iowa (and Contiguous Counties in Minnesota and Wisconsin); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 12, 1991, I find that the Counties of Bremer, Butler, Chickasaw, Clayton, Fayette, Kossuth, Marshall, and Story in the State of Iowa constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 1-15, 1991. Applications for loans for physical damage may be filed until the close of business on September 11, 1991, and for loans for economic injury until the close of business on April 13, 1992, at the address listed: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allamakee, Black Hawk, Boone, Buchanan, Cerro Gordo, Delaware, Dubuque, Emmet, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jasper, Mitchell, Palo Alto, Pocahontas, Polk, Poweshiek, Tama, Winnebago, Winneshiek, and Wright in the State of Iowa; Faribault and Martin Counties in the State of Minnesota; and Crawford and Grant Counties in the State of Wisconsin may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 251506 and for economic injury the numbers are 734200 for Iowa; 734300 for Minnesota; and 734400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-17671 Filed 7-24-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1435]

Delegation of Authority No. 145-7

Pursuant to title XVII of the National Defense Authorization Act for Fiscal Year 1991, Nov. 5, 1990, Public Law 101-510, and the related Memorandum Delegation of Authority of June 25, 1991, section 1(a) of State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, as amended, is hereby further amended by adding at the end thereof the following new subsection:

(6) The functions conferred on the Secretary of State by title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) and all functions conferred on the President by the Act to the extent that such functions were delegated to the Secretary of State pursuant to the Memorandum Delegation of Authority of June 25, 1991.

Dated: July 1, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-17616 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Order Instituting the U.S.-Italy Service Proceeding

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Institution of the U.S.-Italy Service Proceeding, Order 91-7-28. Docket 47654.

SUMMARY: Under a 1990 Memorandum of Understanding between the United States and Italy, as amended on July 3, 1991, the United States may designate a fourth U.S. carrier to provide scheduled combination service between the United States (except from New York or Chicago) and Rome and Milan, Italy, for services commencing April 1, 1992. The route does not provide for beyond or intermediate services. In addition, during the first year of service, the designated carrier may operate a total of six weekly frequencies if using aircraft with more than 300 seats. if aircraft with 300 or fewer seats are used, the designated carrier may operate a total of seven weekly frequencies. During the second year of service the designated carrier may operate seven weekly frequencies regardless of the type aircraft used.

In view of this new route opportunity, the Department has decided to institute the U.S.-Italy Service Proceeding to select one primary and one backup carrier to serve the U.S.-Italy market. The order invites certificate applications from all U.S. carriers interested in providing the available service. The Department has also decided to set this case for an oral evidentiary proceeding before an Administrative Law Judge. Consistent with the Department's efforts to streamline the carrier selection process, the Department's order requires that the Administrative Law Judge serve his Recommended Decision no later than December 6, 1991.

DATES: Applications for U.S.-Italy authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 19-7-28 should be filed by August 5, 1991. Answers should be filed by August 12, 1991.

ADDRESSES: Applications, motions to consolidate, petitions for leave to intervene and petitions for reconsideration should be filed in Docket 47654, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590, as well as on Mr. Robert Goldner, room 9216, at the above address.

Dated: July 22, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-17721 Filed 7-24-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0009.
Form Number: PD F 1851.
Type of Review: Reinstatement.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of Trustee of Personal Trust Estate.
Description: Form 1851 is used to request reissue of savings bonds/notes in the name(s) of the trustee(s) of a personal trust estate.
Respondents: Individuals or households
Estimated Number of Respondents: 55,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,750 hours.

OMB Number: 1535-0015.
Form Number: PD F 1022.
Type of Review: Reinstatement.
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of United States Bearer Securities (Organizations).
Description: Form 1022 is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were holding in safekeeping/custody or are entitled to bearer securities and these securities are no longer in their possession.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535-0016.
Form Number: PD F 1022-1.
Type of Review: Reinstatement.
Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).
Description: Form 1022-1 is needed and required by the Bureau in order to

obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were given, or entitled to bearer securities and these securities are no longer in their possession.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0025.
Form Number: PD F 3360.
Type of Review: Reinstatement.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of a Person or Persons Other Than the Owner (Including Legal Guardian, Custodian for a Minor Under a Statute, etc.).
Description: Form 3360 is used by the owner of Savings Bonds/Notes to request reissue in the name of another person.
Respondents: Individuals or households.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,350 hours.
OMB Number: 1535–0032.
Form Number: PD F 3565.
Type of Review: Reinstatement.
Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds Without Administration of Deceased Owner's Estate.
Description: Form 3565 is used by heirs of deceased owners of Retirement Plan and/or Individual Retirement savings bonds to request disposition of the bonds when no beneficiaries are designated.
Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535–0055.
Form Number: PD F 1050.
Type of Review: Reinstatement.
Title: Creditor's Consent to Disposition of United States Securities and Related Checks Without Administration of Deceased Owner's Estate.
Description: Form 1050 is used to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.
Clearance Officer: Rita DeNagy (202) 447–1315, Bureau of the Public Debt, room 137, DEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–17665 Filed 7–24–91; 8:45 am]

BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer Listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0120.
Form Number: None.
Type of Review: Extension.
Title: (MA)—Securities Offering Disclosure Rules.
Description: The information is needed by the general public to make informed investment decisions. The affected public consists of national banks that issue securities.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 155.
Estimated Burden Hours Per Response: 9 hours, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,515 hours.
Clearance Officer: John Ference (202) 874–5090, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–17666 Filed 7–24–91; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Lenox Hotel, 710 Boylston Street, Boston, Massachusetts on October 9 and 10, 1991. The session on October 9 is scheduled to begin at 7:30 a.m. and end at 6 p.m. and on October 10 from 7:30 a.m. to 3:30 p.m. The meeting will be for the purpose of reviewing six new clinical trials, three in cardiovascular disease prevention and treatment, one in abdominal aneurysm surgery, one in colon cancer, one in alcoholic liver disease and the progress of one on-going study on chronic post traumatic stress disorder. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC (202–535–7154), prior to October 2, 1991.

The meeting will be closed from 8 a.m. to 6 p.m. on October 9 and from 8 a.m. to 3:30 p.m. on October 10, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant

critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: July 15, 1991.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-17715 Filed 7-24-91; 8:45 am]

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION:

DATE AND TIME: Tuesday, July 30, 1991, 10:00 a.m.

PLACE: 999 E Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–17758 Filed 7–23–91; 10:49 am]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 31, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 23, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91–17853 Filed 7–23–91; 10:50 am]

BILLING CODE 6210–01–M

federal register

Thursday
July 25, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3285; FR-3091-N-01]

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of procedures for designating consortia: HOME investment partnerships program.

SUMMARY: The purpose of this notice is to provide guidance to HUD Field Offices and localities on the procedures for designation of units of local government to participate as consortia in the HOME Investment Partnerships Program. The HOME Program is authorized by Title II—Investment in Affordable Housing or HOME Investment Partnerships Act—of the Cranston-Gonzalez National Affordable Housing Act.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–7000; telephone (202) 708–2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers).

DATES: For consideration of an allocation of HOME funds in FY 1992, consortia requests must be received in the applicable HUD Field Office by August 1, 1991. Consortia requests which are approved by the HUD Field Offices must be submitted to HUD Headquarters by September 1, 1991 to be considered for funding in FY 1992.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2501–0013. HUD will not issue a specific form for the consortium agreement; units of local government may develop their own agreements according to the instructions described below.

Statutory Provisions

Section 216(2) of the National Affordable Housing Act provides that a consortium of geographically contiguous units of general local government can be considered to be a unit of general local government for purposes of the HOME Investment Partnerships Act if the Secretary determines that the consortium (a) has sufficient authority and administrative capability to carry out the purposes of the Act on behalf of its member jurisdictions and (b) will, according to a written certification by the State, direct its activities to the alleviation of housing problems within the State.

In the discussion of the basic HOME formula for allocating funds, section 217(b)(3) of the Act states that the Secretary shall allocate funds available for formula allocations to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities (as defined at section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)); urban counties (as defined at section 102(a)(6) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)); and approved consortia of units of general local government. Thus, HUD will provide allocations of funds by formula to units of general local government that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved for the HOME Program.

Eligibility for Forming a Consortium

Units of general local government that are geographically contiguous may form a consortium for purposes of receiving an allocation and participating in the HOME Program. To be considered geographically contiguous, localities must share a boundary at more than a point. A river or other body of water may separate the localities, but if there is transportation access (e.g., bridges), they would be considered contiguous. The units of general local government forming a consortium may be cities or urban counties that would be eligible, individually, to become participating jurisdictions in the HOME Program, or other units of local government. However, a unit of local government that is included in an urban county may be part of a consortium only through the urban county, regardless of whether the urban county receives a formula allocation.

Procedures Localities Must Follow for Designation as a Consortium

At least 60 days before the start of Federal fiscal year 1992 (that is, by August 1, 1991) and by March 31 for all subsequent Federal fiscal years, a consortium of geographically contiguous units of general local government must notify the HUD Field Office of its intention to be considered a consortium for the HOME Program, and must submit to the HUD Field Office:

1. A written certification by the State that the consortium will direct its activities to the alleviation of housing problems within the State and

Note: The State certification may be signed by whoever has the authority to make the certification; it may be the Governor or his/her designee.

2. A legally binding cooperation agreement that the consortium has executed among its members:

(a) Agreeing to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME Investment Partnerships Program;

(b) Authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of the HOME Program;

(c) Providing that the representative member (also referred to as the lead entity) assumes overall responsibility for ensuring that the consortium's Home Program is carried out in compliance with the requirements of the program, including requirements concerning a Comprehensive Housing Affordability Strategy;

Note: The agreement must *not* contain a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved Comprehensive Housing Affordability Strategy.

(d) Accompanied by authorizing resolutions from the governing body of each member unit of local government, or other acceptable evidence that the chief executive officer is authorized to sign the agreement.

(e) Signed by the chief executive officer of each member unit of local government;

Note: If an urban county is part of the consortium, only the county (not all the members of the urban county) signs the consortium agreement.

(f) Containing, or accompanied by, a statement from the lead entity's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the consortium to undertake or assist in undertaking housing assistant activities for the HOME Investment Partnerships Program;

(g) Containing a provision requiring each party to the agreement to affirmatively further fair housing; and

(h) Stating that term of the agreement covers the period necessary to carry out all activities that will be funded from funds awarded for three Federal fiscal years and that the units of general local government which join the consortium are required to remain in the consortium for the entire period, unless one of the member units of local government is an urban county. (For a consortium that includes an urban county, the initial agreement must coincide with the balance of the urban county cooperation agreement and therefore may be less than three years funding.)

Note: The agreement cannot contain a provision for termination or withdrawal by any party to the agreement.

Joint Grant Agreements

The Community Development Block Grant (CDBG) Program regulations at 24 CFR 570.308 allow for any urban county, and any metropolitan city located in whole or in part within that county, to submit a joint request to HUD to approve the inclusion of the metropolitan city as part of the urban county for purposes of planning and implementing a joint community development and housing program. Each metropolitan city and urban county submitting a joint request must also have executed a cooperation agreement to undertake or to assist in the undertaking of essential community development and housing activities. Such agreement is hereafter referred to as a "joint grant agreement."

For the CDBG Program, upon HUD's approval of the joint request and cooperation agreement, the metropolitan city will be considered a part of the urban county for purposes of program planning and implementation and will be treated the same as any other unit of general local government which is part of the urban county.

Localities that have joint grant agreements for the CDBG Program may wish to be considered a consortium for the HOME Program. Since such localities are not actually part of an urban county, if they wish to be considered a consortium for the HOME Program, they must follow the procedures outlined above and submit the required documentation 60 days before the start of FY 1992 (and by March 31 for any subsequent year) for designation as a "consortium."

Comprehensive Housing Affordability Strategy

To receive FY 1992 HOME funds and to become a participating jurisdiction in the HOME Program, a jurisdiction must submit a Comprehensive Housing Affordability Strategy (CHAS) which describes its five-year strategy for addressing housing, homeless and supportive housing needs (see section 105 of title I and section 216(5) of title II of the National Affordable Housing Act and 24 CFR part 91). Since a consortium is considered a unit of local government for purposes of receiving an allocation and participating in the HOME Program, the consortium would be required to submit a CHAS for the localities making up the consortium. When two or more jurisdictions form a consortium for the purpose of receiving a formula allocation under the HOME Program, the consortium must, as a condition of funding, submit a single CHAS that covers the entire geographic area encompassed by that consortium. Where a consortium includes one or more CDBG entitlement grantees, any such grantee need not submit an individual CHAS (for the CDGB Program) in addition to the consortium's CHAS, provided the necessary parts of the consortium's CHAS are broken down by CDBG entitlement, as required by CHAS guidelines.

If joint grant agreement participants form a consortium for the HOME Program, the CHAS submitted by the urban county for the CDBG Program pursuant to a joint grant agreement (in which the metropolitan City is treated as a locality which is a party to the urban County Cooperation Agreement) would also be appropriate for the HOME consortium, since the localities would be the same.

Consortium Cooperation Agreement

The consortium cooperation agreemeent will generally be for three years, and the localities that form a consortium for the HOME Program will be required to remain in the consortium for three Federal fiscal years. However, for a consortium that includes an urban county, the initial agreement may be for less than three years to coincide with the balance of the urban county cooperation agreement. New localities may be added during the period of the consortium cooperation agreement, but once in as a member of the consortium, a locality may not opt out until the period of the consortium cooperation agreement is over. A consortium is not to be a temporary convenience for a locality that cannot make the funding threshold on its own. Those localities that join a consortium should see it as a long-term commitment. If localities expect to be eligible for a formula allocation on their own, they may not wish to be tied to the consortium for three years. Accordingly, localities should consider carefully whether they wish to be part of a consortium.

Once HUD approves a consortium, HUD will consider the consortium as a unit of general local government for purposes of the HOME Program for three Federal fiscal years, or for the term of the agreement. If any new units of local government join the consortium, the consortium must notify HUD so that the new members may be added in for the balance of the three-year period. To be included as part of the consortium for a particular fiscal year, the consortium must notify the appropriate HUD Field Office of any additions by March 31 of the preceding year, and must provide to HUD a copy of the authorizing resolution from the new member's governing body and an amendment to the consortium cooperation agreement signed by the chief executive officer of the lead entity and the chief executive officer of the new unit of local government, adding the new unit of local government as a member of the consortium. Any change in the make-up of the consortium should then be reported by the HUD Field or Regional Office to the Data Systems and Statistics Division, CPD, HUD Headquarters, with a copy to the Office of Urban Rehabilitation, CPD, HUD Headquarters, by April 30, to allow sufficient time for data to be assembled so that the change can be reflected in the next fiscal year's allocation of HOME funds.

In future years, HUD Field Offices should review the status of consortia and if there are consortia agreements whose terms are ending at the end of the fiscal year, Field Offices should notify the lead entity of each such consortium to advise them that if they wish to continue to be considered a consortium for the HOME Program, they must sign a new consortium cooperation agreement and provide a copy, along with the other documentation described in this notice, by March 31 of the renewal year. Renewal of the consortium in this manner will result in a new three-year consortium agreement.

HUD Action

Within one week of publication of this notice, and by March 1 of subsequent years, if there are localities that have joint grant agreements that are not participating as consortia in the HOME Program, HUD Field Offices are to send the lead community for the joint grant agreement (which would be an urban county) a letter asking whether the communities wish to be considered a consortium for the HOME Program. If communities having a joint grant agreement for the CDBG Program wish to be considered a consortium for the

HOME Program, they would follow the procedures outlined above.

For any consortium request for the HOME Program received by August 1 of this year and by March 31 of subsequent years, the HUD Field Office will review the documentation to determine whether the consortium is made up of geographically contiguous units of general local government and whether the consortium has sufficient legal authority and administrative capability to carry out the purposes of the HOME Program on behalf of its member jurisdictions. (Requests received after August 1, 1991 for an allocation of HOME funds in FY 1992 will not be considered for funding until FY 1993.)

Legal Authority

Regional or Field Office Counsel should review each consortium's request to determine if the consortium has sufficient legal authority to carry out the HOME Program. Further guidance to HUD Regional and Field Office Counsel will be provided by the Office of the General Counsel.

Administrative Capacity

If the consortium includes a metropolitan city or an urban county as the lead entity, the consortium would be considered to have sufficient administrative capability unless it includes as its administrative capability to carry out the purposes of the HOME Program. If the consortium does not include a metropolitan city or an urban county, but the lead member or an existing public agency has relevant experience (e.g., successful experience in administering a CDBG or Rental Rehabilitation Program), the consortium could also be considered to have sufficient administrative capability to carry out the HOME Program. On the other hand, a newly created public agency established to administer the HOME Program for a consortium would not be viewed as having sufficient administrative capability unless it includes as its administrator(s) a person or persons with relevant experience in successfully administering programs similar to the HOME Program, such as the CDBG or Rental Rehabilitation Programs.

If the HUD Field Office is satisfied that the consortium meets the requirements for the HOME Program and has the relevant experience, legal authority and administrative capability to carry out the HOME Program, it will approve the consortium request.

The HUD Field Office is to submit to the Data Systems and Statistics Division, CPD, HUD Headquarters, with a copy to the Office of Urban Rehabilitation, CPD, by September 1, 1991 for FY 1992 consideration and by April 30 for each subsequent year, a list of each approved consortium indicating the members of the consortium and the locality that has been designated to act in a representative capacity for all member units of local government. HUD will make every effort to accommodate consortia requests received by August 1, 1991 for the FY 1992 HOME allocations. However, where consortia include areas that are not CDBG entitlements, it may be a problem to assemble data in time to allocate funds for FY 1992. If funds are available for allocation, the Department will not delay allocation of the funds to allow time to assemble data for CDBG non-entitlement members of consortia.

A consortium's status as a unit of general local government for purposes of the HOME Program continues for three Federal fiscal years.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Authority: Title II, sections 216 and 217, of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 19, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

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federal register

Thursday
July 25, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for HUD-Administered State Rental Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3284; FR-3089-N-01]

NOFA for HUD-Administered State Rental Rehabilitation Programs for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1991 and deadlines for submitting program descriptions for HUD-administered State rental rehabilitation programs.

DATES: Program Descriptions should be addressed to the CPD Division Director and must be submitted to the appropriate HUD Field Office by 4 p.m., local time, on or before August 26, 1991.

SUMMARY: This NOFA announces allocations of Rental Rehabilitation Program grant funds available by competition to units of local government in States which have chosen not to administer the Rental Rehabilitation Program in Fiscal Year 1991. It also announces the dates by which Program Descriptions must be submitted to HUD for these localities to be considered for grants, and it describes the application process and the selection criteria for these grants.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, 20410–7000; telephone (202) 708-2470. Hearing- or Speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Rental Rehabilitation Program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control number 2506–0080.

I. Purpose and Substantive Description

(a) Authority

The Rental Rehabilitation Program (RRP) is authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o), as amended, hereafter referred to as section 17. The program regulations are published at 24 CFR part 511. The program provides grant funds to States and units of general local government for the rehabilitation of privately owned real property to be used for primarily residential rental purposes. A statutorily based formula establishes the amount of grants available to most cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and to all States and the Commonwealth of Puerto Rico. However, a State may elect to have HUD administer its allocation for a particular Federal fiscal year. This NOFA announces the funds available by competition to units of general local government in all States which have elected to have HUD administer their RRP allocations for FY 1991.

Under 24 CFR 511.52, if a State elects not to administer its allocation for any fiscal year, the responsible HUD Field Office will make grants to units of general local government located within the State, for use in a local Rental Rehabilitation Program.

(b) Allocation Amounts

The following are the States that have chosen not to administer the RRP for FY 1991 and the amount of funds available by competition to units of general local government in each State:

State	Funds available
Arkansas	$342,000
California	1,689,000
Florida	572,000
Hawaii	36,000
Nevada	51,000
North Dakota	76,000
Oregon	279,000
Total	3,045,000

(c) Eligibility

Eligible applicants are units of general local government that do not receive formula allocations under 24 CFR 511.31(a), and that are located in States that chose not to administer the RRP (see preceding section (b)). Applicants which were eligible for a formula allocation under 24 CFR 511.31(b), but not 511.31(a), and which did not accept such allocations are also eligible to participate in a HUD-Administered Program. The units of general local government which were eligible for formula allocations under 24 CFR 511.31(b) are listed in appendix C to the NOFA for Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions, at 56 FR 21574, published on May 9, 1991. FY 1991 RRP funds under a HUD-Administered State Program may not be used in any portion of any otherwise eligible jurisdiction which is also an area eligible for assistance under title V of the Housing Act of 1949 (administered by the Farmers Home Administration (FmHA)). Further, units of general local government which are totally title V-eligible are not eligible to apply for FY 1991 RRP funds.

(d) Selection Criteria/Ranking Factors

Appendix A to this NOFA describes the selection criteria and ranking factors for Field Offices to use in choosing grantees from among those that submit Program Descriptions pursuant to § 511.20 which are determined to be otherwise satisfactory pursuant to § 511.21(b) of the regulations.

The selection system is designed to select among such otherwise approvable Program Descriptions as required by § 511.52 of the program regulations. The factors that will be used to rank the applications are (1) need, (2) past performance in housing and community development activities, (3) program administration, and (4) quality and impact of the proposed program. Appendix A sets out the weight and relative importance of the factors.

II. Application Process

The Program Description is the application for the Rental Rehabilitation Program.

To be considered for a grant in a HUD-Administered State Program, units of general local government must submit a Program Description to the appropriate HUD Field Office, as required by § 511.52 of the program regulations. For all HUD-Administered State programs for FY 1991, units of general local government wishing to participate in the program must submit a Program Description by August 26, 1991. The Program Description should be submitted to the Director of the Community Planning and Development (CPD) Division in the applicable HUD Field Office, not later than 4 p.m. local time on the stated date. Field Offices are being advised to stamp each program description with the actual date and time of receipt. The details on selection criteria and application processing, including how to apply and how selections will be made, are contained in Chapter 6 (HUD-Administered Programs) and appendix 6–1 (Review Process Statement for HUD-Administered Rental Rehabilitation Program for Small Cities) of the Rental

Rehabilitation Program Handbook (HB 7360.01). However, so that the selection criteria and factors for award are available to all eligible applicants, HUD is publishing portions of the Review Process Statement for HUD Administered Rental Rehabiliation Program for Small Cities as appendix A to this NOFA.

III. Checklist of Application Submission Requirements

The elements to be contained in the Program Description and the certifications to be submitted with the Program Description are stated in appendix A to this NOFA.

IV. Corrections to Deficient Applications

Applicants will only be permitted to correct those deficiencies determined to be technical, i.e., those that do not change the substance of the application, e.g., a missing certification, or missing signature. Applicants will be required to cure any such deficiency within 14 days from the date of HUD's written notice to the applicant of the problem(s). Deficiencies determined to be substantive may not be corrected. Such incurable deficiencies include those which affect the relative ranking of applications under the selection critieria.

V. Compliance with Section 102 of the Department of Housing and Urban Development Reform Act of 1989

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under the HUD-Administered State Rental Rehabilitation available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later notice to be published in the **Federal Register**.

—A notice will be published in the **Federal Register** indicating the recipients of the assistance made available under this NOFA.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh street SW., Washington, DC 20410–0500.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have Federalism implications and, thus, is not subject to review under this Order. This NOFA does not alter the established roles of State and local governments in the administration of the Rental Rehabilitation Program.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

Authority: Section 17, United States Housing Act of 1937, 42 U.S.C. 1437o; Section 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated July 19, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

Appendix A—Section I, Program Description for Localities Participating in a HUD-Administered State Rental Rehabilitation Program for Small Cities

Program Description requirements for localities participating through a State-wide competition are very similar to Program Description requirements for localities receiving direct allocations of Rental Rehabilitation Program funds by formula. Of the following requirements, the parts that are underlined are additional items that are needed for competitively evaluating the Program Descriptions pursuant to section 511.52(b). Otherwise, the requirements are the same as stated in section 511.20(b) and(c) of the program regulations, except for the addition of the certification regarding lobbying (See item 16.g of this section I).

HUD Field staff will be available to answer questions from potential applicants concerning their Program Descriptions. However, once the application has been submitted for evaluation, the applicant will not be given an opportunity to revise its Program Description except for technical corrections (those that do not change the substance of the application or affect its relative ranking, e.g., a missing certification, or missing signature).

To be considered for funding for FY 1991, an applicant must submit a Program Description, which must be received in the HUD Field Offices by 4 p.m. local time, August 26, 1991, which includes Standard Form 424 signed by its Chief Executive Officer or his or her designee and a narrative statement organized as follows:

1. *Program Activities.* A description of the applicant's proposed Rental Rehabilitation Program, consisting of (a) the activities the applicant proposes to undertake for the fiscal year, (b) *a description of why a Rental Rehabilitation Program is needed, and (c) a management plan for the operation of the program, which indicates the staff who will be working on the Rental Rehabilitation Program, their experience in rehabilitation, and the amount of their time that will be spent on the Rental Rehabilitation Program.*

2. *Neighborhood Selection.* The Program Description shall identify the neighborhood(s) in which assisted activities are to be carried out and provide information, for each neighborhood, to indicate compliance with the requirements of §§ 511.10 (c)(1) and (c)(2), including:

(a) A map indicating the boundaries of each neighborhood, or a description of the boundaries of each neighborhood;

(b) Median income of the neighborhood; and

(c) Current rent levels in the neighborhood; and a statement as to whether standard units are generally affordable to lower income families and the likelihood of their continued affordability for lower income families for the next five years.

Where the neighborhoods in which assisted activities are to be carried out are known at the time of submission of the Program Description, the applicant will indicate the evidence (such as recent market studies and analysis for the neighborhoods) upon which compliance with the requirements of section 511.10(c) is based. Where the neighborhoods are not known at that time, the applicant will indicate the type of neighborhood selection guidelines or other means it will use to ensure compliance with these requirements.

3. *Lower-Income Benefit.* A description of how the applicant intends to ensure that the applicable percentage of rental rehabilitation grant amounts will be used for the benefit of lower-income families, as specified in section 511.10(a). The description will indicate how the grantee plans to achieve the specified level of lower-income benefit.

4. *Use of Rental Rehabilitation Grants for Housing for Families.* A description of the applicant's plan to ensure that an equitable share of rental rehabilitation grant amounts will be used to assist in the provision of housing designed for occupancy by families with children, particularly families requiring three or more bedrooms. The applicant will describe how it plans to give priority to projects containing three or more bedroom

units. If applicable, the applicant will include an explanation of why it proposes to use less than 70 percent of its rental rehabilitation grant for the rehabilitation of units containing two or more bedrooms, as prescribed in section 511.10(b) (1) and (2). Such explanation shall include the citation of any local seismic standard ordinance.

5. *Selection of Proposals.* A statement of the procedures and standards that will govern the selection of proposals by the applicant. These procedures and standards must take into account:

a. The extent to which the proposal represents the efficient use of rental rehabilitation grant amounts;

b. The extent to which the proposal will minimize displacement of lower income tenants in accordance with the displacement and tenant assistance policy in § 511.14; and

c. The extent to which the dwelling units involved will be adequately maintained and operated with rents at the level proposed. This may consist of a description of plans for requiring a sufficient equity interest, risk, or other involvement in selected projects by private investors and lenders to ensure appropriate incentives to maintain and operate units after rehabilitation.

d. The extent to which priority is to be given to the selection of projects with units that are occupied by very low-income families before rehabilitation that do not meet the applicant's rehabilitation standards adopted pursuant to 24 CFR 511.10(e) and also to projects that will result in dwelling units that are to be made readily accessible to and usable by individuals with handicaps. (See 24 CFR 511.10(g)).

6. *Financial Feasibility.* Evidence demonstrating the financial feasibility of the proposed Rental Rehabilitation Program, including the availability of non-Federal governmental and private resources. Where the applicant has not identified specific projects at the time of submission of the Program Description, the evidence will consist of the applicant's plans to ensure its program's financial feasibility, including plans to obtain non-Federal resources.

7. *Neighborhood Preservation.* An estimate of the effect of the proposed Rental Rehabilitation Program on neighborhood preservation.

8. *Schedule for Committing Rental Rehabilitation Grant Amounts.* A quarterly schedule that demonstrates the applicant's plan to commit to specific local projects its rental rehabilitation grant for the fiscal year for which funding is sought. This schedule must at a minimum show that at least 50 percent of the total grant amount will be so committed within 9 months and 100 percent will be so committed within 12 months, after the date of HUD's execution of the grant agreement.

For this Program Description, the applicant should submit a schedule based on the amount of Rental Rehabilitation grant funds requested in Item 15 of this section. A revised schedule may be required if the applicant's program is approved for an amount different from the amount requested.

9. *Nondiscrimination and Equal Opportunity.* A statement of policy and procedures to be followed by the applicant to meet the requirements for affirmative marketing of units in rehabilitated projects as required in section 511.13(b).

This element must address each of the five (5) affirmative marketing procedures stated in section 511.13(b)(1) and describe how these affirmative marketing procedures will be achieved.

10. *Applicant's Organizational Structure.* The name, address, and telephone number of the agency and contact person responsible for administering the Rental Rehabilitation Program. *A description of the staff and dollar resources applicant will use to administer the program.*

11. *PHA Participation.* a. A Memorandum of Understanding (MOU) signed by the unit of general local government and the appropriate PHA in accordance with 24 CFR 511.40, if possible. If the PHA has not agreed to an MOU, the unit of general local government must include a statement describing its timetable for executing a MOU in accordance with 24 CFR 511.40 prior to commitment of grant amounts to specific projects, or, in the alternative, how it will meet the affordability and relocation requirements of the RRP without the use of section 8 resources.

b. If applicable, the name, address, and telephone number of the PHA contact person.

12. *High Cost.* If applicable, an explanation of why higher average per dwelling unit rental rehabilitation grant amounts for projects are proposed, as provided in section 511.11(e)(2)(ii).

13. *Amount of Rental Rehabilitation Grant Funds Requested. A statement by the applicant indicating the amount of rental rehabilitation grant funds requested for the fiscal year.*

14. *A Statement of The Applicant's Recent Past Rehabilitation Activities. This should include the number of units/properties rehabilitated, the source of funds, and the amount of public funds spent for the rehabilitation for each of the last 3 years. In addition, the applicant should briefly address each of the items listed under Factor 2 of the competitive selection factors in Section II–B below.*

5. *Certifications.* The applicant shall certify that:

a. The submission of the Program Description is authorized under State and local law (as applicable), and the applicant possesses the legal authority to carry out the Rental Rehabilitation Program described therein, in accordance with 24 CFR part 511;

b. Its Rental Rehabilitation Program was developed after consultation with the public and its Program Description has been made available to the public;

c. If applicable, its lower-income benefit standard should be reduced to 70 percent as provided by 24 CFR 511.10(a)(2); this certification will be accompanied by an explanation of the reasons why this reduced benefit standard is necessary, as provided in 24 CFR 511.10(a)(2).

d. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24 part and the requirements of 24 CFR 511.14 which include adoption of a written tenant assistance policy.

e. It will conduct and administer its Rental Rehabilitation Program in accordance with the requirements of 24 CFR 511.

f. It will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

g. If applicable, it will comply with the certification and disclosure requirements regarding lobbying at 24 CFR part 87. (Potential grantees should refer to 55 FR 6736 (February 26, 1990) or 24 CFR part 87 for the language for the certification and disclosure, which are contained in appendix A and appendix B to part 87, respectively.

Section II—The Selection System

A Program Description submitted for the HUD-Administered Rental Rehabilitation Program for Small Cities is evaluated in two stages. First, the HUD Field Office must determine the Program Description's acceptability under the criteria listed in section 511.21(a) of the Rental Rehabilitation Program regulations. Second, the Field Office must competitively rank the Program Descriptions pursuant to section 511.52(b) of the regulations and this RPS. Each Field Office shall apply a consistent approach to ranking all applications received in a particular fiscal year.

The following describes the two-stage review process for HUD-Administered Small Cities Program Descriptions:

A. Threshold Review

1. Was Program Description received within the time period established, including any extension that was granted by HUD?

2. Does Program Description contain evidence sufficient (on the basis of the Description or otherwise) to support each of its required elements?

—Does the Program Description address each of the required elements listed in section 511.20(b) and section I of this appendix?
—Is there sufficient information to support each required element?
—Are required certifications included (as required by section 511.20(c) of the Program Regulations and section I, Item 15 of this appendix)?

Note: If Program Description indicates that applicable percentage of lower-income benefit is 70 percent, appropriate certification should be included and the Program Description should contain the reasons necessary to support the reduction to 70 percent.

3. If applicable, has an acceptable Annual Performance Report (APR) for the preceding program year been received from the applicant? If not applicable, answer N.A.

4. Has the Housing Division advised that a participating Public Housing Agency's (PHA's) application for section 8 resources would be approvable, or in the alternative, has the community demonstrated that it can meet the affordability and relocation requirements of the RRP without section 8 resources?

If the answer to any of the above questions is no, the program description should not be approved.

B. Competitive Factors and Points

Factor 1. Need: (Data to be supplied by HUD)—200 points
- a. Rental Households in Poverty
- b. Poverty Rental Households in Pre-1940 Structures
- c. Rental Households with One of Four Problems:
  - (1) High rent cost,
  - (2) Overcrowding,
  - (3) Incomplete kitchen facilities, or
  - (4) Incomplete plumbing

Factor 2. Past Performance in Housing and Community Development Activities—100 points
- a. Rate of fund commitment for recent CDBG rehabilitation activities, if applicable: (20)
- b. The promotion of fair housing and equal opportunity in its housing and community development activities: (20)
- c. The quality of work accomplished through the CDBG rehabilitation activities: (20)
- d. The lack of audit findings, serious monitoring findings, and/or litigation against the community for housing and community development activities: (20)
- e. Extent to which past rehabilitation activities demonstrate a specific capacity to administer the Rental Rehabilitation Program: (20)

Factor 3. Program Administration—150 points
- a. Quality of management plan and organizational structure: (100)
- b. The readiness and ability of a PHA to administer vouchers and certificates in support of the locality's RRP or in the alternative a means of administering other resources to meet the affordability and relocation requirements: (50)

Factor 4. Quality and Impact of Proposed Program—150 points
- a. The extent to which the description of the applicant's program activities indicates an understanding of the program goals: (20)
- b. The likelihood that the applicant's selection of neighborhoods, or guidelines for selecting neighborhoods, will result in neighborhoods with rents affordable to lower-income families and neighborhoods where the median income is equal to or less than 80 percent of the median income for the area: (30)
- c. Reasonableness of the applicant's description for achieving lower-income benefit: (20)
- d. Extent to which applicant gives priority for rehabilitating units suitable for large families with children, particularly families requiring three or more bedrooms: (20)
- e. Adequacy of description of how priority is to be given to the rehabilitation of units which are substandard and occupied by very low-income families and adequacy of description of how priority is to be given to the rehabilitation of units accessible to and usable by individuals with handicaps: (20)
- f. Reasonableness of applicant's schedule for implementing its Rental Rehabilitation Program: (20)
- g. Extent to which applicant's proposed procedures for affirmative marketing indicate an understanding of fair housing objectives; appear to be adequate for informing eligible persons about the rehabilitated housing regardless of race, color, religion, sex or national origin; and include a method for assessing the results of actions taken by the grantee, (recipient) and owner: (20)

Applicant's Score (Total of Factors 1, 2, 3 and 4 above) ______

Total Points Possible: 600

C. Evaluation of Competitive Factors

Based on the evaluation of competitive factors, an applicant will be given points from zero (0) to the maximum points possible for each factor, as indicated in the preceding section.

Factor 1—Need Factor

The Bureau of the Census supplies the data for the need factors which account for 200 points. These factors are the same that are used to allocate Rental Rehabilitation Program funds to localities receiving a direct formula allocation and reflect the need for assistance under the Rental Rehabilitation Program.

Factor 2—Past Performance Factor

The Field Office may give up to 100 points based on the applicant's past performance in community development and housing programs. The applicant's statement in response to Item 14 in the Program Description should be considered as well as the Field Office's knowledge of the applicant's past performance. In evaluating the applicant's performance, the following will be considered:

a. The rate of fund commitment for recent CDBG property rehabilitation activity: The extent to which the applicant's productivity in its rehabilitation program has been satisfactory and rehabilitation projects have been completed in a reasonable time.

b. The promotion of fair housing and equal opportunity: The extent to which the applicant has promoted fair housing and equal opportunity in its housing and community development programs. The reviewer will consider the applicant's performance with respect to nondiscrimination in providing benefits, affirmatively furthering fair housing, use of minority and women-owned businesses and employment of women and minorities. Staff will consider any recent monitoring and compliance review conclusions and any related court findings/consent decrees.

c. The quality of work accomplished through the locality's CDBG program: The extent to which good quality work has been performed. Field Office staff monitoring the locality's rehabilitation program have found quality work and also the lack of complaints from recipients of CDBG rehabilitation assistance.

d. The lack of (1) audit findings, (2) serious monitoring findings, and/or (3) litigation against the community for its housing and community development activities.

e. Extent to which past rehabilitation activities demonstrate a specific capacity to administer the Rental Rehabilitation Program: Field staff should consider whether the locality's past experience would help it to run a Rental Rehabilitation Program, such as previous experience in the Rental Rehabilitation Program. For localities that have participated previously in the Rental Rehabilitation Program:

—Whether market rents of 80 percent or more of the units rehabilitated in the program are affordable to lower-income families (at or below published section 8 FMRs or HUD-approved community-wide exception rents).

—Whether the program has met the statutory priority for providing housing for large families, (extent to which rental rehabilitation grant amounts are used to rehabilitate units containing two or more bedrooms and three or more bedrooms).

—Whether the program has met the priority of rehabilitating substandard units occupied by very low-income families and also for projects that will be made readily accessible to and useable by individuals with handicaps.

—Extent to which more than 80 percent of the units have market rents affordable to lower-income families.

—Extent to which gross amount of public funds (as determined by HUD) used for rehabilitation per unit have been minimized and the extent to which the amount of public subsidy funds as a percentage of rehabilitation costs have been minimized.

—Extent of grantee management efficiency, based upon such measures as average cost of administration per unit assisted, average project processing time, quality and timeliness of reports, and other measures indicating sound program management.

—Extent to which rental rehabilitation grant amounts have been committed to specific projects and projects have been completed.

Factor 3—Program Administration Factor

a. Quality of Management Plan and Organizational Structure

Does the locality's management plan indicate a sufficient commitment of staff time and expertise to run a successful Rental Rehabilitation Program? Does the locality's management plan identify specific staff, their qualifications and what their responsibilities will be in the program? What has been the experience of the staff in previous housing and/or community development programs? Is the organization likely to work? In assigning points to this component of the Program Administration Factor, the Field Office staff will rely not only on what is stated in the locality's management plan, but also on their knowledge of the locality's present administrative capacity to administer housing and community development programs.

A good indication of the locality's continuing capacity to administer a Rental Rehabilitation Program is the locality's satisfactory past participation in the Rental Rehabilitation Program.

The Field Office will award up to 100 points for this component of the Program Administration Factor.

b. Availability of a PHA to Administer Section 8, or Alternative

Has the PHA developed an MOU with a PHA or submitted a schedule concerning its plans to do so? In the latter case, is there a letter of commitment from the PHA? If a PHA is not available, has the applicant described how it will handle tenant assistance and relocation requirements and has it identified the resources it will use? If the applicant has demonstrated the ability to adequately assist tenants either through a PHA or by an acceptable alternative, it should be awarded 50 points. If the applicant's proposal in this regard is not completely satisfactory, the Field Office should award no or fewer points depending on how significantly deficient the applicant's proposal is on this factor.

If the applicant receives less than a combined total of 150 points for the Past Performance and Program Administration Factors, it is doubtful that the applicant has the capacity to run a successful Rental Rehabilitation Program.

Factor 4—Quality and Impact of Proposed Program Factor

The Field Office will review the Program Description from each applicant and give either all, some, or none of the points for each of the seven questions pertaining to the quality of the application. Each application should be judged individually and the points given should reflect how well each applicant responds to the application requirements. All applications, however, should be evaluated in a consistent manner.

Completing the Evaluation of Applications and Allocating Funds

After the points are given for the four factors, the Field Office will total the points for each applicant and rank the applicants from high to low. Those Program Descriptions which do not meet the threshold review criteria in Section II–A above will not be included in the ranking.

A score of 400 or more should generally be considered acceptable and should receive funding. If the total funds available are sufficient to fund all the top applications, or those receiving a score of 400 or more, they should all receive funding.

If there are sufficient funds available to approve all applications that receive at least 300 points, the Field Office may consider funding those applications. Field Offices should not fund an application that receives fewer than 300 points, except where extenuating circumstances warrant. However, before allocating funds to the approvable applicants, Field Offices should consider the reasonableness of each approvable applicant's request for Rental Rehabilitation grant funds relative to the needs of other approvable applicants. Field Offices may reduce the requested amount if it is determined unreasonable.

If the funds available to the State (or Field Office jurisdiction part of a State) are not sufficient to fund all approvable applications, the Field Office may cut back the funds in one of several ways, such as:

(1) Giving the best application or applications their total request if those requests are considered reasonable and reducing funds to those receiving fewer points.

(2) Reducing every approvable applicant's request proportionately down to a fixed threshold.

(3) Starting at the top of the list and providing funding to as many of the localities (provided their funding requests are reasonable) as the total funds available would allow.

(4) If two or more applicants receive the same number of points in the evaluation system, the Field Office will consider the needs for a Rental Rehabilitation Program as indicated by Factor 1. If funds are available to fund only one of the applicants, the one with the greater need will be funded.

Chapter 6 (HUD-Administered Programs) and section IV of exhibit 6–1 of the Rental Rehabilitation Program Handbook (7360.01) provide a further explanation of the competitive factors and how HUD will review otherwise approvable Program Descriptions received in response to this NOFA, except as modified by this NOFA. Persons interested in obtaining this explanation may contact the Community Planning and Development Division in the nearest HUD Field Office or the Rehabilitation Management Division of the HUD Central Office cited at the beginning of this NOFA.

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July 25, 1991

Part IV

Nuclear Regulatory Commission

10 CFR Parts 2 and 35

Quality Management Program and Misadministrations; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 35

RIN 3150-AC65

Quality Management Program and Misadministrations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending regulations governing therapeutic administrations of byproduct material and certain uses of radioactive sodium iodide to require implementation of a quality management program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician. The Commission believes this performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the quality management program and misadministrations.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Byproduct Material in Medicine

Use of Byproduct Material

Since 1946, growth in the medical applications of radioisotopes has been very rapid as their usefulness has become more apparent in diagnosis, therapy, and medical research. Current medical procedures employ a number of radioisotopes in a wide variety of chemical and physical forms. Nuclear medicine procedures for diagnostic and therapeutic applications involve the internal administration of radiolabeled tracers. Administration of the radiolabeled tracers, known as radiopharmaceuticals, may be performed by intravenous injection, inhalation, or oral ingestion. Diagnostic nuclear medicine in most cases involves imaging agents used for the delineation and localization of organ tissues by scintigraphy (e.g., technetium-99m hydroxymethylene diphosphonate used as a bone-seeking radiopharmaceutical). Organ function may be determined by quantifying the accumulation of radiopharmaceuticals in organs of interest (e.g., iodine-131 uptake studies used to assess thyroid function). Therapeutic nuclear medicine may use various radiopharmaceuticals for the treatment of disease by selective absorption or concentration (e.g., iodine-131 used to treat thyroid cancer). Other therapeutic applications may involve the use of radiopharmaceuticals in colloidal suspensions for the treatment of malignant tumors (e.g., phosphate-32 infusion for treatment of peritoneal or pleural effusions associated with malignant tumors).

Since the early 1900s, radiation therapy has become one of the major modalities of treatment in the management of neoplastic disease, generally referred to as cancer. Radiation therapy may also be used as a palliative agent in the medical treatment process. The objective of conventional radiation therapy using a teletherapy sealed source is to deliver a precisely measured dose of radiation to a defined tumor volume. This is usually accomplished by delivering a dose in daily increments over several weeks. External beam radiation therapy has evolved using innovative technology that has led to the development of the gamma stereotactic radiosurgery device used for treatment of precisely defined intracranial targets (e.g., brain tumors and arteriovenous malformations).

Brachytherapy uses a variety of smaller sealed sources for localized treatment of cancer. Typically the sealed sources are either inserted in a cavity (e.g., cesium-137 sources used for intracavitary treatment of cervical cancer) or implanted in tissue (e.g., iodine-125 seeds used for interstitial treatment of prostate cancer). Various remote afterloading devices have been developed for low, medium, and high dose rate brachytherapy treatments.

State and Federal Regulations

Byproduct material or radiation from byproduct material is regulated by either State or Federal laws. Twenty-eight states, known as Agreement States, have entered into an agreement with the NRC to regulate the use of byproduct material (as authorized by section 274 of the Atomic Energy Act). These States issue licenses and currently regulate about 4,000 institutions, e.g., hospitals, clinics, or physicians in private practice.

The NRC regulates the administration of byproduct material or radiation from byproduct material in 22 States, the District of Columbia, the Commonwealth of Puerto Rico, and various territories of the United States and has licensed 2,000 civilian and military hospitals and clinics.

II. NRC's Regulatory Program

NRC's Policy

In a policy statement published on February 9, 1979 (44 FR 8242), entitled "Regulation of the Medical Uses of Radioisotopes; Statement of General Policy," the NRC stated:

(1) The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

(2) The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

(3) The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material or radiation from byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients.

NRC's Responsibilities

The NRC distinguishes between the unavoidable risks attendant in purposefully prescribed and properly

performed clinical procedures and the unacceptable risks of improper or careless use. The NRC is responsible, as part of its public health and safety charge, to establish and enforce regulations that protect the public from risks of improper procedures or careless use.

Misadministration Reports

The NRC has analyzed therapy misadministrations, abnormal occurrences, and diagnostic misadministrations in the therapy range over the period of November 1980 through December 1990 for the NRC licensees. The results of the analysis for events that occurred from November 1980 through December 1988 were summarized in the preamble to the proposed rule published January 16, 1990 (55 FR 1439). The events that occurred in 1989 and 1990 were similar to the events from the earlier years except that the number of therapy events in 1990 was approximately double the average number of therapy events for the previous years. Table 1 provides a brief description of the therapy misadministrations, abnormal occurrences, and diagnostic misadministrations involving iodine that occurred in 1989 and 1990. Although some of the events listed in the table may have caused direct harm to the patients, the overall significance of these events is that they indicate a breakdown in the licensee's program for ensuring that byproduct material or radiation is administered as directed by the authorized user. It has been assumed that a proportional number of such occurrences has also taken place in the Agreement States although the data base is not yet complete.

The causes of these misadministrations and/or abnormal occurrences may be characterized by insufficient supervision, deficient procedures or failure to follow procedures, inattention to detail, and inadequate training.

These factors are often significant in causing or contributing to misadministrations or abnormal occurrences. The purpose of this rulemaking is to address these factors by requiring each applicable part 35 licensee to establish and implement a quality management program. Thus, each licensee will be required to have and implement procedures to ensure that the byproduct material or radiation from byproduct material is administered as directed by the authorized user physician. Improved training of personnel who handle and administer byproduct material can also reduce mistakes. However, this rulemaking does not address training; the need for training initiatives will be considered by NRC in the future.

TABLE 1.—MISADMINISTRATIONS, ABNORMAL OCCURRENCES, AND OTHER EVENTS

Date	Licensee	ST	Description
	NRC LICENSEES—1989		
	Teletherapy		
01/23	Abbott Northwestern Hospital [1]	MN	Wrong Treatment Site: Adm 250 rads to wrong thigh due to improper marking.
03/09	Kennebec Valley Med Ctr [1]	ME	Wrong Patient: Adm 100 rads to brain.
03/27	Indiana Univ School of Medicine [1]	IN	Wrong Treatment Site: Adm 9 fractions of 300 rads each to the wrong hip due to marking.
07/24	Worcester City Hospital [1]	MA	Wrong Patient: Adm 250 rads to spine.
	Brachytherapy		
01/23	Yale New Haven Hospital	CT	Wrong Dose: Adm 1000 rads, Rx 500 rads, due to wrong decay factor.
01/31	St. Luke's Hospital	MO	Wrong Dose: 56% underdose due to wrong source strength.
09/19	Med Ctr of Delaware	DE	Wrong Dose: Adm 1731 rads, Rx 3091 rads.
10/25	Children's Hospital	MA	Wrong Dose: Adm 3952 rads, Rx 4534 rads.
11/30	Yale New Haven Hospital	CT	Wrong Radioisotope: Adm 500 rads, Rx 2500 rads.
	Nuclear Medicine—Exceeding Diagnostic Range		
03/14	New England Med Ctr [1]	MA	Wrong Radiopharmaceutical: Adm 5 mCi I-131, Rx 1 mCi I-123.
05/23	Abbott Northwestern Hospital [1]	MN	Wrong Radiopharmaceutical: Adm 3 mCi I-131, Rx 300 μCi I-123.
10/18	Mayo Foundation [1]	MN	Wrong Dosage: Adm 1 mCi I-131, Rx 100 μCi I-131.
11/30	Kuakini Medical Center [1]	HI	Wrong Patient: Adm 9 mCi I-131.
	Nuclear Medicine—Diagnostic Range or Involving Iodine		
02/09	Warminister Central Hospital	PA	Wrong Patient: Adm 175 μCi I-131 hippuran.
02/28	Milwaukee County Med Center	WI	Wrong Patient: Adm 50 μCi I-131 hippuran.
02/28	Washington Hospital Center	DC	Wrong Patient: Adm 155 μCi I-131 hippuran.
03/20	Christian Hospital	MO	Wrong Patient: Adm 17 μCi I-131 sodium iodide.
04/03	VA Medical Center	FL	Wrong Radiopharmaceutical: Adm 0.33 mCi I-131 hippuran, Rx 5.29 mCi Tc-99m MAA.
05/15	Hershey Medical Center	PA	Wrong Radiopharmaceutical: Adm 0.5 mCi I-131 MIBG, Rx 0.5 mCi I-131 NP-59.
07/89	Montefiore Hospital	PA	Wrong Dosage: Adm 24 μCi I-131, Rx 12 μCi I-131.
	NRC LICENSEES—1990		
	Teletherapy		
02/08	Cleveland Clinic [1]	OH	Wrong Dose: Adm 3 fractions of 278 rads each, Rx 2 fractions.
02/16	Washington Hospital Ctr [1]	DC	Wrong Patient: Adm 45 rads to lung.
02/19	Geisinger Medical Center	PA	Wrong Dose: Adm 4200 rads, Rx 3000 rads due to 4 additional fractions.
03/12	Muskogee Reg Med Ctr [1]	OK	Wrong Treatment Site: Adm 2160 rads.
03/16	Riverside Reg Med Ctr [1]	VA	Wrong Patient: Adm 296 rads to brain.
03/19	St. Mary's Med Ctr [1]	MI	Wrong Treatment Site: Adm 250 rads.
04/20	St. Luke's Hospital	OH	Wrong Dose: Adm 4619 rads, Rx 5304 rads.
05/07	Indiana Univ School of Medicine	IN	Wrong Dose: Adm 1800 rads, Rx 1350 rads due to misinterpreting the prescription.
06/22	St. Luke's Hospital [1]	OH	Wrong Treatment Site: Adm 178 rads.
09/14	Presbyterian Hospital	PA	Wrong Dose: Adm 5225 rads, Rx 4500 rads due to 4 additional fractions.

TABLE 1.—MISADMINISTRATIONS, ABNORMAL OCCURRENCES, AND OTHER EVENTS—Continued

Date	Licensee	ST	Description
	Brachytherapy		
01/17	Monongahela Valley Hospital [1]	PA	Failure to Detect Dislodged Source: One dislodged cesium-137 source irradiated the patient's leg.
02/02	Ball Memorial Hospital [1]	IN	Wrong Treatment Site: Adm 1500 rads, sealed source in wrong location.
02/07	University of Wisconsin [1]	WI	Wrong Dose: Adm 4120 rads, Rx 3240 rads due to wrong input to the computer.
03/15	University of Wisconsin [1]	WI	Wrong Treatment Site: Adm 400 rads due to wrong input to the computer.
03/16	John F. Kennedy Hospital [1]	NJ	Failure to Detect Dislodged Source: Source dislodged and the patient's face irradiated 1032 rads.
03/21	Parkview Mem Hospital	IN	Failure to Detect Dislodged Source: Applicator pulled out by the patient, the patient's legs irradiated 623 rads.
03/90–05/90	St. Mary Med Ctr, Gary and Hobart [1]	IN	Pattern of Wrong Doses: Entire brachytherapy operations were investigated and suspended.
08/29	Univ of Cincinnati [1]	OH	Wrong Treatment Site: Most seeds were implanted outside the prostate.
09/17	Cooper Medical Center	NJ	Wrong Dose: Adm 1464 rads, Rx 3000 rads due to wrong treatment plan.
	Nuclear Medicine—Exceeding Diagnostic Range		
04/17	St Francis Med Ctr	PA	Wrong Dosage: Adm 56 mCi I-131, Rx 50 μCi I-131.
05/14	Overlook Hospital [1]	NJ	Wrong Radiopharmaceutical: Adm 1.4 mCi I-131, Rx 300 μCi I-123.
06/04	Valley Hospital	NJ	Wrong Dosage: Adm 4.51 mCi Sr-89, Rx 3.54 mCi Sr-89.
06/04	Valley Hospital	NJ	Wrong Dosage: Adm 4.02 mCi Sr-89, Rx 2.87 mCi Sr-89.
06/05	Mercy Memorial Med Ctr [1]	MI	Wrong Dosage: Adm 4.3 mCi I-131, Rx 50 μCi I-131.
06/19	Tripler Army Medical Center [1]	HI	Unintended Dose to Nursing Infant: An infant received dose from mother's milk due to 4.89 mCi I-131 adm to mother; infant thyroid ablated.
07/10	North County Hospital	VT	Unintended Dose to Fetus: A pregnant patient adm 15 μCi I-131; failed to ask if pregnant.
07/10	St. Vincent Med Ctr	PA	Wrong Dosage: Adm 110.1 mCi I-131, Rx 100 mCi I-131.
07/19	Brigham and Women's Hospital	MA	Wrong Dosage: Adm 180 mCi Dy-165, Rx 270 mCi Dy-165.
07/27	North Detroit General Hospital [1]	MI	Fraudulent Studies: Old imaging films submitted for current patients resulting in excess doses for repeated studies.
08/01	Frankford Hospital	PA	Wrong Dosage: Adm 20 mCi I-131, Rx 14 mCi I-131.
09/22	West Shore Hospital [1]	MI	Wrong Dosage: Adm 175 mCi Tc-99m, Rx 8 mCi Tc-99m.
10/15	William Beaumont Hospital [1]	MI	Wrong Dosage: Adm 315 mCi I-131, Rx 175 mCi I-131.
11/26	VA Medical Center [1]	CA	Wrong Radiopharmaceutical: Adm 168 mCi Tc-99m, Rx 5 mCi In-111.
	Nuclear Medicine—Diagnostic Range or Involving Iodine		
02/01	VA Edward Hines Jr. Medical Center	IL	Wrong Radiopharmaceutical: Adm 0.716 mCi I-131 Hippuran, Rx 3.5 mCi Tl-201.
02/05	VA Medical Center	CA	Wrong Radiopharmaceutical: Adm 1 mCi I-131 iodochole, Rx 1 mCi I-131 MIBG.
03/20	Cleveland Clinic	OH	Wrong Dosage: Adm 130 μCi I-131, Rx 100 μCi I-131.
03/30	Downriver X-ray and Nuclear Diagnostics	MI	Wrong Dosage: Adm 100 μCi I-131, Rx 16 μCi I-131.
03/90	Davis Mem Hospital	WV	Wrong Dosage: Patients received 50% less dosage of I-131 than prescribed.
04/30	Johnson Willis Hospital	VA	Wrong Patient: Adm 9 μCi I-131 sodium iodide.
05/04	Central Plains Clinic	SD	Wrong Radiopharmaceutical: Adm 0.01 mCi I-125 Albumin, Rx 25 mCi Tc-99m.
08/07	Copley Hospital [1]	VT	Wrong Dosage: Adm 112 μCi I-131, Rx 10 μCi I-131.
09/05	Mansfield Gen Hospital	OH	Wrong Radiopharmaceutical: Adm I-123, Rx I-131.
09/13	West Park Hospital	WY	Wrong Dosage: Adm 0.0068 mCi 1-131, Rx 1 mCi I-131.
10/30	Dept of Vet Affairs Medical Center	FL	Wrong Patient: Adm 0.262 mCi I-131 Hippuran.
12/05	Jersey Shore Hospital	PA	Wrong Radiopharmaceutical: Adm I-125 HSA, Rx Tc-99m UGA.
12/12	Jersey Shore Hospital	PA	Wrong Radiopharmaceutical: Adm I-125 HSA, Rx Tc-99m UGA.

[1] Misadministrations designated as abnormal occurrences.

Voluntary Initiatives

The NRC is aware of voluntary initiatives to improve quality assurance (QA). Examples include "Patterns of Care," a study managed by the American College of Radiology (ACR), "Quality Assurance Program in Radiation Oncology," prepared by ACR, and "Physical Aspects of Quality Assurance in Radiation Therapy," prepared by the American Association of Physicists in Medicine (AAPM).

The NRC encourages voluntary initiatives by the industry to develop consensus standards and will consider endorsing these standards in its regulatory guidance at an appropriate time. However, because these voluntary standards may not be adopted by all licensees, voluntary programs alone are not sufficient to ensure that the byproduct material will be administered as directed by the authorized user. Consequently, the NRC has determined that there is a need for this final rule.

Earlier NRC Efforts

On October 2, 1987 (52 FR 36942), the NRC published a proposed rule that would have required its part 35 licensees to implement some specific basic QA practices to reduce the number of mistakes in the therapeutic administration of radiopharmaceuticals or radiation from byproduct material and the administration of radioactive iodine. Public comments received on the proposed rule indicated that, although these proposed QA practices might reduce the number of mistakes, the imposition of prescriptive requirements might not afford sufficient flexibility for all licensees. Public comments, including recommendations from the NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI), suggested that a performance-based rule should be promulgated, rather than a prescriptive rule. The ACMUI also suggested that a pilot program would be useful to determine the licensees' ability to meet

a proposed rule, to assess its impact, and to determine how to minimize its impact without decreasing its effectiveness. Furthermore, the ACMUI stated that, under existing NRC regulations, the definition of the term "misadministration" is unclear and that the related reporting requirements are confusing.

Subsequently, the NRC decided to develop a performance-based rule and a regulatory guide and, as a part of the same rulemaking, to review the term "misadministration," its scope and related reporting requirements. In addition, the NRC also decided to conduct a pilot program.

III. Publication of the Proposed Rule and Discussion of Related NRC Activities

The Proposed Rule

The NRC published proposed amendments to 10 CFR part 35 in the **Federal Register** on January 16, 1990 (55 FR 1439) and provided a 90-day public comment period. The proposed rule contained amendments that would require part 35 licensees to establish and implement a basic QA program. It also contained proposed modifications to the definition of "misadministration" and the associated reporting and recordkeeping requirements.

To collect additional information about the proposed rule from NRC and Agreement State licensees, the NRC conducted a pilot program. Also, the NRC conducted public workshops with professional associations, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Agreement States, and met with the NRC's ACMUI to obtain additional comments on the proposed rule. These workshops were open to the public, and prior notice was given through **Federal Register** announcements. Brief discussions of these activities are presented below.

The Pilot Program

The pilot program was conducted to provide a real-world test of the proposed rule in licensee hospitals and clinics and to gain insights beyond those generally obtained from the public comment process. Three basic questions were of interest:

(1) Can licensees develop QA programs to meet the objectives of the proposed rule following a performance-based approach using the regulatory guide or any other guidance of their choice?

(2) If NRC reviewed a licensee's written QA program, would the NRC agree that the program meets the objectives of the proposed rule?

(3) If NRC visited a licensee's hospital or clinic, would the NRC agree that the implemented program meets the objectives of the proposed rule?

Also, after the licensees had tested the proposed rule, the NRC wanted to learn from licensees if they had problems with the proposed rule and their recommendations on how the rule should be revised in order to minimize its cost and clarify its objectives without decreasing its effectiveness.

Based on the principles of acceptance sampling, the plan was to invite a group of 72 volunteer licensees that represent the U.S. population of part 35 type licensees. The total was divided into 24 NRC and 48 Agreement State volunteers because there are approximately twice as many Agreement State licensees as there are NRC licensees. Groups were defined using the five NRC regions and the 28 Agreement States. The number of volunteers invited from each group was in proportion to the number of licensees in that group. Also, it was desirable to have the volunteers represent specific licensee characteristics within each group, as well as possible, considering the number of volunteers randomly selected from that group. The specific licensee characteristics were class of licensee (i.e., teletherapy, brachytherapy, radiopharmaceutical therapy, and diagnostic nuclear medicine), type of facility (i.e., private or nonprivate), size of facility (i.e., small—up to 250 beds, or large—over 250 beds), and facility location (i.e., urban within a U.S. Bureau of Census Standard Metropolitan Statistical Area, or rural—otherwise).

Letters inviting participation in the pilot program were sent to a total of 185 licensees. Seventy-six institutions volunteered (27 NRC and 49 Agreement State licensees).

Five one-day workshops were held, one in each NRC region, to explain the overall process of the pilot program and to discuss the proposed rule and draft regulatory guide. Following these workshops, the volunteers developed QA programs that conformed to § 35.35 or amended their existing QA programs to meet the objectives of proposed § 35.35. The volunteers also conducted any necessary training in preparation for their trial use of the § 35.35-type QA programs. During a 60-day period from mid-May to mid-July 1990, the volunteers used their § 35.35-type QA programs for their administrations of byproduct material or radiation from byproduct material.

To address the first two questions stated above, the NRC evaluated each volunteer's written § 35.35-type QA program to determine whether it met the proposed objectives. To address the third question stated above, the NRC visited the hospitals or clinics of 18 (12 NRC and 6 Agreement State) volunteers to determine whether their § 35.35-type QA programs, as implemented, met the proposed objectives. These site visits were conducted during the 60-day trial use period.

At the end of the pilot program, five two-day workshops were held, one in each NRC region except Region V, to learn about the volunteers' experiences in using their § 35.35-type QA programs and to discuss the volunteers' problems with and recommendations on how to revise the proposed rule and draft regulatory guide. Prior to these workshops, each volunteer was asked to complete a written questionnaire as an evaluation of the proposed rule and draft regulatory guide. There were 64 volunteers (23 NRC licensees and 41 Agreement State licensees) who actually participated in all aspects of the pilot program. The following is a summary of the lessons learned from the pilot program.

(1) Licensees can develop acceptable QA programs under a performance-based approach.

(2) The licensees' programs, as written, did meet most of the proposed § 35.35 objectives, even without benefit of an iterative process (e.g., questions and revisions) as occurs during licensing.

(3) The licensees' programs as actually implemented were found during the 18 site visits to be more complete than the written programs in meeting the proposed § 35.35 objectives. Some programs completely met the objectives.

(4) Most licensees already had an existing QA program because of JCAHO or a professional society; thus, neither the incremental work nor the cost involved to meet the proposed § 35.35 objectives were substantial.

(5) Proposed § 35.35 objective number 1 to "ensure that the medical use is indicated for the patient's medical condition" and objective number 4 to "ensure that the responsible individuals understand the directions provided by the authorized user" should be deleted, but the other six objectives should be retained.

(6) The word "errors" in § 35.35(a) should be replaced with a term to specifically describe what is to be prevented.

(7) To avoid confusion in the thousands of hospitals that are already accredited by JCAHO, the NRC should use a term other than "quality assurance."

(8) The term "written directive" should be used instead of "prescription" to avoid confusion with existing medical practices.

(9) The sentence structure should be simplified by stating multiple requirements or criteria in lists, i.e., (a), (b), and (c).

(10) A required "written referral" for diagnostic procedures would be unnecessarily costly.

(11) The patient should be redundantly identified.

(12) The "annual comprehensive audit" should be replaced with an annual program review based on a random sample of patient administrations.

(13) The reporting requirements of proposed §§ 35.33 and 35.34 should be simplified.

(14) The reporting threshold criteria of an organ dose of 2 rems and a whole body dose of 0.5 rem should be modified because these criteria are exceeded during most routine diagnostic procedures.

(15) The procedure should be retained that allows the licensee to handle "events," i.e., mistakes that exceed a relatively low threshold, within its institution without reporting to NRC; events exceeding a higher threshold should be reported to NRC (or the applicable Agreement State).

A NUREG/CR report summarizing the pilot program is under preparation and will be published in the near future.

Public Workshops

ACNP and SNM

The NRC conducted a public workshop with representatives of the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) in Rockville, Maryland, on July 23, 1990. The proposed QA rule was compared with the current JCAHO Standards and with a JCAHO-type QA program for one hospital to determine if equivalence existed. It was concluded that the proposed QA rule is comparable to the JCAHO Standards. The ACNP and SNM provided various questions, comments, and recommendations regarding the proposed rule. Most fundamentally, ACNP and SNM representatives questioned the need for the rule and whether additional NRC requirements would contribute to reducing the number of misadministrations. The major ACNP-SNM recommendations are:

(1) Withdraw the proposed QA rule.

(2) Endorse the JCAHO accreditation process and allow NRC licensees to comply with JCAHO requirements in lieu of the proposed QA rule for diagnostic nuclear medicine administrations.

AAPM, ACMP, ACR, AES, and ASTRO

On November 19 and December 15, 1990, the NRC conducted public workshops with representatives of the American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), American Endocurietherapy Society (AES), and American Society for Therapeutic Radiology and Oncology (ASTRO) in Reston, Virginia. The proposed QA rule, definitions, reporting requirements, and regulatory guide were discussed on a line-by-line basis. Numerous suggestions were provided by the representatives of each professional association. Their major recommendations are:

(1) Do not use the title "Quality Assurance Program" to avoid confusion with the existing JCAHO programs.

(2) Do not use the term "misadministration."

(3) Use "calculated" administered dose for teletherapy and brachytherapy.

(4) Increase the range of tolerance between calculated administered dose and prescribed dose in teletherapy and brachytherapy.

(5) Use "written directive" instead of "prescription."

(6) Remove the word ensure from the beginning of each proposed objective.

(7) Do not use the word prevent because it sounds too absolute.

(8) Allow events (i.e., mistakes that exceed a relatively low threshold) to be handled within the institution.

The JCAHO

The staff conducted a public workshop with the JCAHO in Chicago, Illinois, on December 17, 1990. The common elements of the proposed QA rule and JCAHO requirements were discussed. The staff attempted to determine if the NRC regulation, licensing, and inspection processes are equivalent to the JCAHO standards, accreditation, and survey processes. Based on this workshop, the NRC staff concluded the following:

(1) The JCAHO standards are nearly equivalent to the diagnostic components of the proposed QA rule with only minor modifications required to achieve equivalence.

(2) The JCAHO does not perform a licensing review prior to a facility survey; therefore, no equivalence exists with the NRC licensing process. However, the JCAHO awards accreditation only after a facility survey.

(3) The JCAHO survey process is partially equivalent to the NRC inspection process with the significant difference being the amount of time spent in the specific departments; that is, in most cases the NRC spends considerably more time.

Overall, although the JCAHO accreditation applies to the entire hospital and the NRC license would only apply to the radiation therapy and nuclear medicine departments, the two processes have similar objectives.

The Agreement States

The NRC conducted public workshops with representatives of the Agreement States on March 14, 1990, December 18 and 19, 1990, and February 7 and 8, 1991. The workshops were held in Rockville, Maryland; Irving, Texas; and San Mateo, California, respectively. The following Agreement States were represented at one or more of the workshops: Alabama, Arkansas, California, Illinois, Louisiana, Maryland, New York, Rhode Island, Texas, Utah, and Washington. A representative from the City of New York also attended two workshops. The Agreement States that provided written comments that were incorporated into the record during the San Mateo, California, workshop were Alabama, Kentucky, Nebraska, North Dakota, Oregon, and Utah. The proposed QA rule (and subsequent draft revisions), definitions, reporting requirements, and regulatory guide were discussed. The Agreement States provided line-by-line recommendations. The major recommendations provided by the representatives are:

(1) All administrations of byproduct material or radiation from byproduct material should be approved by the authorized user prior to administration.

(2) Do not use the title "Basic Quality Assurance Program" to avoid confusion with the JCAHO program.

(3) Revise the proposed dose threshold levels for "events" and "misadministrations."

(4) The rule, definitions, and reporting requirements should be revised based on recommendations from the ACMUI on January 14 and 15, 1991, and should be republished for public comment.

(5) The proposed regulations should not be a matter of compatibility for Agreement States.

(6) If the proposed regulations are required to be adopted by the Agreement States, then compatibility requirements should be established at no higher than Division 3.

The ACMUI

The NRC staff presented a draft final rule, reporting requirements, and associated definitions to the ACMUI during a public meeting on January 14

and 15, 1991, in Alexandria, Virginia. The ACMUI is an advisory body, currently composed of physicians, medical physicists, a radiopharmacist, and a technologist, established for advising the NRC staff on matters involving the administration of byproduct material and radiation from byproduct material. The ACMUI devoted one and a half days to a line-by-line discussion of the draft final rule, reporting requirements, and associated definitions. The NRC staff also met with a Subcommittee of the ACMUI in a public workshop on March 26, 1991, in St. Louis, Missouri, to discuss the same topics. The major ACMUI recommendations on the draft final rule as of March 1991 are:

(1) Do not include diagnostic components and associated definitions in the final rule.

(2) Retain the therapy components and the use of a "written directive."

(3) Do not use the word "prevention" because it sounds too absolute.

(4) Do not include any assessment of the patient's pregnancy and nursing status in the objectives of the final rule.

(5) Use the term "reportable event" instead of "misadministration."

(6) Add a dose threshold criterion for reporting diagnostic events, such as the dose to the patient exceeds 5 rems effective dose equivalent.

(7) Do not include "unintended dosage to an embryo or fetus or to a nursing infant" as criteria for a reportable event.

(8) Change the time period for patient notification of a reportable event from 24 hours to 15 days to allow adequate time to calculate the actual dose delivered in complex situations.

(9) Retain the requirements for therapy events to be evaluated and responded to within the licensee's institution.

(10) Delete the requirement to notify the referring physician in the case of a reportable event.

(11) Allow the report to the patient to be a summary description of the event in language that the patient can understand rather than a copy of the technical report sent to the NRC.

(12) Allow the licensee to make modifications to maximize the program's efficiency and require a copy of the modifications to be provided to the NRC Regional Office within 30 days.

At its meeting on May 10, 1991, the ACMUI recommended that no quality management or quality assurance rule on medical use of any kind is needed or appropriate.

Public Comments and NRC Responses

About 3,000 copies of the notice of the proposed rulemaking as published in the Federal Register (January 16, 1990; 55 FR 1439) were mailed in January 1990 to all applicable licensees under 10 CFR part 35, Agreement State and Non-Agreement State agencies, professional associations, and other interested groups.

The NRC received 79 comment letters from many different sources in response to the proposed rule. In terms of the types of organizations, there were 52 comment letters from hospitals and clinics, 12 from professional associations, 6 from Agreement State or local government agencies (1 letter contained comments from 5 Agreement States), 3 from pharmacies, and 6 from individuals. In terms of professions, the tally is 32 from physicists or technologists, 26 from physicians, 8 from pharmacists, and 13 others. Forty-seven letters (60 percent) opposed the proposed rule. Twenty-eight letters (35 percent) did not specifically indicate support or opposition for the rule, but did suggest modifications. Four letters (5 percent) supported the rule.

General categories of public comments and NRC's responses are presented below. In Section IV entitled "Discussion of Final Rule Text," modifications of the proposed rule that are due, in part, to specific public comments are indicated. Some comment letters also addressed items in the draft regulatory guide. The comments on the regulatory guide will not be discussed here, but they were considered during the preparation of the final regulatory guide.

(1) Many commenters stated that the quality assurance rule represents an unwarranted intrusion into the practice of medicine. They stated that the NRC should concentrate its efforts on radiation protection.

Response. The NRC agrees that any intrusion into medical judgments affecting patients should be minimized. The purpose of the rule, however, is not to limit the authorized user, but to ensure that the licensee establishes procedures to control the administration of byproduct material or radiation from byproduct material. The rule concentrates on the question of whether each administration of byproduct material by the healthcare workers, upon whom the authorized user depends, is, in fact, administered as directed by the authorized user. The NRC recognizes that radiation therapy is a dynamic process and that the authorized user has the right and the responsibility to modify a previously written directive, prior to continuing treatment, depending upon the progress of the patient. The NRC believes that requiring a licensee to ensure that the process of administering byproduct material is conducted as directed by the authorized user is directly related to the radiation protection of the patient and does not constitute an unwarranted intrusion into medical judgments.

The Commission notes that similar comments were raised by members of the medical community on the Commission's original proposed misadministration reporting rule published for comment on July 7, 1978 (43 FR 29297). For the reasons stated in the notice that accompanied the final misadministration rule on May 14, 1980 (45 FR 31701), the Commission believed that these requirements were justified to identify the causes of misadministrations in order to correct them and prevent their recurrence. This view was consistent with the conclusions of a review performed by the General Accounting Office (EMD–79–16; January 1979), which stated:

> "In our view, requiring medical licensees to report misadministrations to NRC is not an intrusion into medical practice. This is clearly consistent with NRC regulatory responsibilities and a necessary part of an effective nuclear medicine regulatory program. Without this kind of feedback on incidents affecting the public health and safety, NRC cannot be sure it is adequately regulating the possession and use of nuclear materials in medical practice.

The Commission reaffirms these conclusions in promulgating the requirements in today's notice and notes that, contrary to the views expressed a decade ago on the potential impacts of the misadministration requirements, experience with these requirements to date has not shown the reporting and notification requirements to be a problem or an unreasonable burden on the regulated community.

(2) Some commenters stated that the proposed rule would have little effect on reducing the reported mistakes. Almost all commenters supported the goal of reducing mistakes and stated that most facilities already have good quality assurance programs. In fact, some commenters pointed out that the frequency of reported mistakes is already small and that the proposed rule could not substantially reduce that frequency.

Response. The NRC has analyzed the reported mistakes involving byproduct material since 1980. The results of the analyses suggest that the major causes are insufficient supervision, deficient procedures or failure to follow procedures, inadequate training, or inattention to details. Although the rate has been very low, the number of reported mistakes in therapeutic

administrations in 1990 was almost double the average number for previous years.

As stated in the NRC's Policy Statement on Medical Uses of Radioisotopes, the risk to the patient can be significant for mistakes involving all therapeutic and certain diagnostic procedures. Therefore, the licensees should make every effort to prevent mistakes in therapeutic administrations. The NRC believes that after a licensee implements the quality management (QM) program, most mistakes will be detected and corrected, thus minimizing the occurrence of misadministrations. (See comment 6 regarding the use of the term "quality management program," instead of "quality assurance program.") Therefore, to ensure adequate patient safety it is necessary for the NRC to require licensees to implement a QM program sufficient to ensure that the byproduct material or radiation from byproduct material is administered as directed by the authorized user.

The NRC realizes that it is impossible to prevent all mistakes, but believes that licensees should do their best to avoid them. The rule will emphasize the importance of a QM program and the need for each worker to participate in the program.

(3) Many commenters stated that the cost of implementing the proposed rule would be high with little potential for a corresponding reduction in mistakes. Thus, the commenters stated that the implementation of the proposed rule cannot be justified.

Response. In light of the public comments, lessons learned from the pilot program, and recommendations from the professional associations and the ACMUI, the proposed rule has been modified significantly to reduce cost without significantly reducing the level of protection. The proposed requirements that would have had minimal impact on risk have been eliminated to make the final rule more cost effective (e.g., deleting the diagnostic components of the proposed rule). Considering that several proposed provisions or actions have been eliminated, i.e., written diagnostic referrals, diagnostic events, specific investigations by the Radiation Safety Officer, and reports to licensee management on diagnostic events, as well as the adoption of other suggestions and the performance-based approach, the NRC believes that the cost effectiveness of the final rule has been optimized. Also, refer to the response to comment 2, above.

(4) Many commenters stated that the dose to patients from mistakes in diagnostic nuclear medicine administrations, except those procedures involving either sodium iodide I–125 or I–131, would not result in any measurable effect to the patient. They suggested that the requirements on the low-risk diagnostic procedures be eliminated.

Response. The NRC agrees with this comment and believes that the diagnostic use of radiopharmaceuticals is, in most cases, an area of relatively low radiation risk to patients. The ACMUI also advised the NRC that the diagnostic components should be eliminated from the final rule on the basis of cost versus benefit considerations. Thus, the QM portion of the final rule does not contain any diagnostic components for low risk radiopharmaceuticals. However, the final rule retains reporting requirements for deviations that exceed specific dose thresholds and requirements for higher risk radiopharmaceutical administrations, such as either sodium iodide I–125 or I–131 in quantities greater than 30 microcuries.

(5) Many commenters stated that the JCAHO and other professional associations, such as the ACR and the AAPM, are committed to quality assurance in medicine. They further stated that because these organizations have developed quality assurance programs to be used as voluntary standards and that many medical facilities are already using these programs, this rule is unnecessary. Also, commenters suggested that the NRC should consult with these organizations in the development of the rule and should permit the use of the voluntary standards in place of the rule to avoid duplicate efforts.

Response. Since the standards developed by professional associations are voluntary and since not all healthcare facilities are accredited by JCAHO, there is no guarantee that all licensee facilities will have a QM program. This rule is designed to ensure that each applicable licensee will implement a QM program. It is possible that the NRC may endorse one or more of the voluntary standards in regulatory guides in the future.

In response to the second suggestion, as discussed in Section III of this Supplementary Information, the NRC did meet with JCAHO and seven professional associations in 1990 and discussed ways to improve the proposed rule. Moreover, many of their suggestions were incorporated into the final rule.

In response to the third suggestion, since this is a performance-based rule, a licensee using a voluntary program may not need to replace its existing program, rather only supplement it, thereby ensuring that the objectives of the rule are being met. Thus, the use of a performance-based rule is intended to eliminate duplicate efforts. During the pilot program, the volunteers were asked about their existing QA programs and the amount of incremental work or cost required by the proposed rule. The volunteers responded that they were already meeting most of the objectives in the proposed rule as part of their existing QA programs. Thus, the incremental burden on most volunteers appears to be small, and that is expected to be the case in general for the typical licensee.

(6) Many commenters stated that the term "quality assurance" should not be used in this rule. Quality assurance, as used in all departments of a hospital, is a program to ensure that high quality medical care is provided to the patients. In a nuclear medicine or a radiation oncology department, quality assurance means responsiveness to perceived care needs, degree of symptom relief, degree to which the care is the technical state of the art, efficient use of funds available, appropriate use of health care resources, etc., as well as administering the byproduct material as directed by the authorized user. The commenters recommended that a different term be used in this rule to indicate that this rule addresses only the delivery process of administering byproduct material.

Response. The NRC agrees with this comment. The term "quality assurance" has the wrong connotation because under JCAHO it applies to the entire hospital. Since this rule addresses only the process of administering byproduct material, the term "quality management program" is used in the final rule to preserve the quality concept and avoid confusion with the existing "quality assurance" concept. The term quality management (QM) program will be used in subsequent discussions.

(7) Some commenters responded to the NRC's question, stated in the **Federal Register** notice, concerning the proper use of the term "misadministration," that it should be reserved for the most serious incidents such as overexposures resulting in death or serious injury. The commenters further stated that "misadministration" has a negative connotation that implies willful or gross negligence on the part of the physician and other hospital workers. Terms such as events, unscheduled events, incidents, or deviations were suggested as preferred replacements.

Response. The NRC disagrees with this comment. The term

"misadministration" correctly conveys that a mistake in the administration of byproduct material or radiation has occurred. It is neither pejorative, nor does it connote wrongdoing or malpractice, merely that byproduct material or radiation from byproduct material has, for whatever reason, not been administered as directed by the authorized user. Therefore, the term "misadministration" and its definition, modified as indicated in response to comments (8) and (9) below, have been retained.

(8) Some commenters stated that the proposed definitions of diagnostic misadministrations, therapy misadministrations, diagnostic events, and therapy events and the associated reporting requirements are overly complex and thus confusing. The commenters recommended that these definitions be simplified.

Response. The NRC agrees with this comment. Based on the lessons learned from the pilot program, suggestions made by the professional associations, the ACMUI, and the Agreement States, the terminology was simplified by (a) using only two terms, "recordable events" and "misadministration," and (b) moving the definition of all terms to § 35.2. (The terms recordable event and misadministration, as defined therein, will be used in subsequent discussions of this final amendment.)

(9) Many commenters stated that the proposed (and current) dose thresholds, i.e., an organ dose greater than 2 rems or a whole body dose greater than 0.5 rem, are too restrictive for determining whether to submit a report to the NRC. The commenters stated that at these dose levels, there are no biological effects to the patient. They further stated that many commonly used nuclear medicine diagnostic procedures routinely produce doses to nontarget organs in the range of two to eight rems. Clearly, these routine procedures should not constitute misadministrations.

Response. The NRC agrees that routine doses from diagnostic procedures represent a small amount of risk to the patient. Similar comments were made by professional societies and the ACMUI. Further, the ACMUI recommended a whole body threshold of 5 rems effective dose equivalent. Based on lessons learned from the pilot program, and the recommendations from public comments and the ACMUI, the organ threshold of 50 rems dose equivalent and a whole body threshold of 5 rems effective dose equivalent were adopted as thresholds for identifying misadministrations. These levels correspond to a threshold well below the onset of acute, clinically detectable adverse effects that may be caused by exposure to ionizing radiation (refer to NCRP Commentary No. 7, "Misadministration of Radioactive By-product Material—Scientific Background," National Council on Radiation Protection and Measurements, Bethesda, Maryland, July, 1991). Also, these levels correspond to the annual dose limits in the new 10 CFR part 20 for occupational workers which are thresholds for reporting overexposures to the NRC. Therefore, the Commission believes that applying these same thresholds to reporting of exposures to patients in excess of what was intended in diagnostic administrations is reasonable.

(10) Many commenters stated that the occurrence of a misadministration may not necessarily be an indication of an inadequate QM program. The commenters stated that, in fact, the identification of misadministrations could be viewed as evidence of a good QM program. Based on the "Patterns of Care Study," those hospitals with superior personnel and facilities had the highest cure rates. Why would one conclude that the hospitals with the lowest cure rates have adequate monitoring programs to detect misadministrations or have adequate QM programs? In particular, facilities that never report misadministrations may not have adequate QM programs for the detection of those misadministrations. Thus, it is not necessarily correct to associate good QM programs with no misadministrations or to associate inadequate QM programs with the occurrence of a misadministration. Furthermore, the commenters stated that the rule may discourage licensees from reporting misadministrations.

Response. The NRC agrees that the occurrence of a misadministration may not necessarily be evidence of inadequate QM. However, for example, either a case of gross negligence or a case of multiple misadministrations could be considered a lack of sufficient licensee management attention in implementing its QM program. With regard to reporting misadministrations, the Commission encourages licensees to promptly identify and report safety problems as reflected in the current enforcement policy. Furthermore, because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, the NRC may exercise enforcement discretion if certain conditions are met (refer to section G of appendix C, 10 CFR part 2).

(11) Some commenters questioned whether the NRC has enough qualified personnel to inspect QM programs in the licensees' hospitals, clinics, or private practice offices.

Response. In recent years, the NRC has increased its recruitment of personnel who have experience and knowledge either in nuclear medicine or in radiation therapy. Inspectors will be trained in all aspects of the rule and the regulatory guide and will be provided with specific inspection guidance. Accordingly, the NRC believes that it has enough qualified inspectors to conduct adequate inspections associated with this rule.

IV. Discussion of Final Rule Text

This section discusses the final rule text and the modifications made to the proposed rule. Throughout the following discussion, referring to the text of the final regulations may aid in understanding the specific points of this discussion.

Part 2—Rules of Practice for Domestic Licensing Proceedings

Appendix C. General Statement of Policy and Procedure for NRC Enforcement Actions

As stated in the proposed rule notice, the Commission views the occurrence of misadministrations as a subject of concern in the medical use of byproduct material and, in certain circumstances, may subject the licensee to enforcement action. Supplement VI of appendix C was modified by amending current examples dealing with misadministrations and adding specific examples of violations of the QM program. The examples added to part 2 of the final amendment are essentially the same as in Section V, "Enforcement," of the proposed amendment with the following modifications:

(1) At Severity Level III, the term "misadministration" is used to replace two proposed terms, "diagnostic misadministrations" and "therapy misadministrations."

(2) At Severity Level III, the example "failure to conduct adequate audits of a QM program or take prompt corrective actions for deficiencies identified through each audit" is moved to Severity Level IV. Also, the phrase "annual review" is used instead of the proposed word audit to conform to the rule language in the final amendment.

(3) At Severity Level IV, "failure to keep records" is added as an example.

Part 35—Medical Use of Byproduct Material

Section 35.2 Definitions

To consolidate the definitions, all definitions were moved to § 35.2. Based on the public comments, lessons learned from the pilot program, and recommendations from ACMUI, the following proposed definitions have been deleted from the final rule: Basic Quality Assurance, Diagnostic Event, and Diagnostic Referral. The other definitions were adopted with some modifications and are discussed in alphabetical order.

Diagnostic Clinical Procedures Manual. This definition has been modified as follows:

(1) The word "diagnostic" was added to clarify that this term only applies to diagnostic procedures.

(2) The proposed phrase "in a single binder" was deleted to permit the use of multiple binders.

Misadministration. The term "misadministration" as used in proposed § 35.2 and described in proposed §§ 35.33(b) and 35.34(b) has been retained. Table 2 provides a summary of the mistakes captured by the terms "misadministration" and "recordable event," although the requirements themselves should be consulted for the precise definitions of these terms.

TABLE 2.—MISTAKES CAPTURED BY THE TERMS "RECORDABLE EVENT" AND "MISADMINISTRATION"

Procedure	Recordable event	Misadministration
All Diagnostic Radiopharmaceuticals (including <30 μCi NaI, I-125 or I-131).		● Wrong patient, radiopharm, route, or dosage *and* ● Dose >5 rem Effective Dose Equivalent or 50 rem to organ.
Sodium Iodide Radiopharmaceuticals (where >30 μCi NaI I-125 or I-131).	● Admin dosage differs by >10% prescr dosage *and* >15 μCi. ● W/o written directive ● W/o daily dosage record	● Wrong patient ● Wrong radiopharm ● Admin dosage differs by >20% prescr dosage *and* >30 μCi.
Therapeutic Radiopharmaceuticals	● Admin dosage differs by >10% prescr dosage ● W/o written directive ● W/o daily dosage record	● Wrong patient ● Wrong radiopharm ● Wrong route of admin ● Admin dosage differs by >20% prescr dosage.
Teletherapy	● Calculated weekly dose 15% >prescr dose ● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong mode of treatment ● Wrong treatment site ● Calculated weekly dose 30% >prescr dose ● Calculated total dose differs by >20% total precr dose ● If <3 fractions, calc total dose differs by >10% total prescr dose.
Brachytherapy	● Calc dose differs by >10% prescr dose ● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong radioisotope ● Wrong treatment site ● Leaking sources ● Failure to remove sources for a temporary implant ● Calculated admin dose differs by >20% prescr dose.
Gamma Stereotactic Radiosurgery	● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong treatment site ● Calculated total admin dose differs by >10% total prescr dose.

Six categories of misadministrations are defined in the final amendment. Paragraphs (2), (3), (4), (5) and a part of paragraph (1) replace therapy misadministration as proposed in § 35.34(b). Paragraph (6) and a part of paragraph (1) replace diagnostic misadministration as proposed in § 35.33(b).

Each category of misadministration under this definition is discussed here in the same sequence as it appears in the definition of misadministration in § 35.2 of the final rule.

(1) This paragraph applies to any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131. Paragraph (1)(i) is essentially the same as the corresponding items in proposed § 35.34(b)(1). However, the phrases "wrong target organ" and "wrong route of administration" were deleted because the thyroid is the only target organ for sodium iodide and it concentrates in the thyroid regardless of the route of administration. Paragraph (1)(ii) is the same as proposed § 35.34(b)(2) with two modifications. First, the threshold is now 20 percent, instead of 10 percent. Recall that if the administered dosage differs from the prescribed dosage by more than 10 percent, a recordable event has occurred that the licensee is required to respond to internally within the institution. Since the licensee is detecting these smaller deviations and taking the appropriate actions, these events do not need to be reported to NRC. However, larger deviations that exceed 20 percent are required to be reported because they could possibly indicate a deficiency in the QM program, not because they necessarily indicate a significant risk to the patient. For these reasons, the threshold was increased to 20 percent.

Secondly, an additional threshold of 30 microcuries is added. If the difference between the administered dosage and the prescribed dosage is 30 microcuries or less, it is not reported even if the difference exceeds 20 percent. This additional threshold was added to avoid the unnecessary work associated with the generation of reports on events with small differences and that pose relatively minor risks to the patients.

(2) This paragraph applies to any therapeutic radiopharmaceutical administration except those involving sodium iodide I–125 or I–131. Paragraph (2)(i) is the same as the corresponding items in proposed § 35.34(b)(1). The phrase "wrong target organ" was deleted because the

radiopharmaceutical (i.e., the correct chemical compound) and the route of administration determine the distribution of byproduct material among the organs or tissues, including the target organ. For example, a frequently used therapeutic radiopharmaceutical and route are sodium phosphate P–32 given intravenously, which is preferentially taken up by the target organ, the skeleton. The only way the wrong organ could be targeted is if the wrong radiopharmaceutical or route of administration were used. Both of these errors are already included in the definition of a misadministration. Thus, the wrong target organ is redundant.

Paragraph (2)(ii) is the same as proposed § 35.34(b)(2), with the exception that the threshold is now 20 percent for the same reasons discussed above, in category (1) of misadministration.

(3) This paragraph applies to gamma stereotactic radiosurgery and replaces a part of proposed § § 35.34(b)(1) and 35.34(b)(3). Paragraph (3)(i) is essentially the same as in proposed § 35.34(b)(1) with the exception that the phrase "wrong sealed source" was deleted because the device used for this type of procedure contains only cobalt-60 sources.

Paragraph (3)(ii) is the same as proposed § 35.34(b)(3)(i). The threshold of 10 percent for the total dose was retained because a large radiation dose is administered during the procedure, and therefore, deviations greater than 10 percent may have greater safety significance and need to be reported to NRC and promptly addressed by the licensee.

(4) This paragraph applies to teletherapy and it replaces proposed § 35.34(b)(3) and a part of § 35.34(b)(1). Paragraph (4)(i) is essentially the same as in proposed § 35.34(b)(1), but uses the phrase "wrong mode of treatment," rather than "wrong sealed source." This change is intended to clarify that teletherapy misadministrations capture the use of the wrong sealed source, as well as such events as a patient receiving cobalt-60 teletherapy when linear accelerator therapy was prescribed.

Paragraphs (4)(ii) through (4)(iv) replace proposed § 35.34(b)(3). The phrase "calculated administered dose" replaces the proposed phrase "administered dose" to clarify that a measured dose is not expected.

Paragraph (4)(ii) applies to teletherapy treatments with three or fewer fractions. It is the same as proposed § 35.34(b)(3)(i). The threshold of 10 percent for the total dose was retained because these procedures involve larger radiation doses per fraction than procedures with more than three fractions, and thus deviations greater than 10 percent may have greater safety significance. For example, a hemi-body teletherapy treatment might involve three fractional doses of 400 rads each fraction. One undesirable complication of a substantial overdose (e.g., 50 percent greater than the prescribed dose) for this treatment might be radiation pneumonitis or even death. Therefore, such events need to be promptly reported to the NRC and addressed by the licensee.

Paragraph (4)(iii) replaces proposed § 35.34(b)(3)(ii), with the exceptions of (a) the phrase "weekly dose" is used instead of "fractional dose" and (b) the phrase "30 percent greater than the weekly prescribed dose" is used instead of "greater than twice or less than one-half of the prescribed fractional dose." These changes allow a weekly comparison with the prescribed dose because many excellent therapy departments currently utilize a weekly chart check and the ACR recommends a weekly check. Recall that if the weekly administered dose exceeds the weekly prescribed dose by more than 15 percent, a recordable event has occurred, which the licensee will respond to internally to the institution. Since the licensee should be detecting the smaller weekly deviations and taking appropriate actions, calculated weekly administered doses that are 30 percent greater than the weekly prescribed doses will be reported because they could possibly indicate a deficiency in the QM program, which could be of greater safety significance, rather than because they necessarily indicate a risk to the patient. However, calculated weekly administered doses that are less than the weekly prescribed doses will not be reported because the criteria for the total doses capture significant deviations.

Paragraph (4)(iv) is the same as proposed § 35.34(b)(3)(i), with the exception that the threshold is now 20 percent. Since the licensee is monitoring weekly dose deviations and taking appropriate actions, a deviation from a total prescribed dose that exceeds 20 percent will be reported because it could possibly indicate a deficiency in the QM program, which could be of greater safety significance, rather than because it necessarily indicates a significant risk to the patient.

(5) This paragraph applies to brachytherapy and it replaces proposed § 35.34 (b)(4), (b)(5), and part of § 35.34(b)(1). Paragraph (5)(i) is the same as in proposed § 35.34(b)(1) with the following two modifications: (a) The phrase "wrong radioisotope" replaces the phrase "wrong sealed source" and (b) a parenthetical note for permanent implants was added to clarify the intent. "Radioisotope" is a more specific term than "sealed source." For permanent implants, the intent is to exclude from the determination of the wrong treatment site seeds that were implanted in the correct site but migrated outside that site.

Paragraphs (5)(ii) and (5)(iii) are essentially the same as proposed § 35.34(b)(4). The phrase "one or more sealed sources that are not removed upon completion of the procedure" was used in (5)(iii) instead of the proposed phrase "is lost or is unrecoverable during the brachytherapy treatment," to clarify the intent. The phrase "is lost or is unrecoverable" produced confusion among the pilot program volunteers, whereas, the phrase "is not removed upon completion" is clear and was recommended by the professional associations.

Paragraph (5)(iv) is the same as proposed § 35.34(b)(5) except that the phrase "calculated administered dose" was used instead of "administered dose" to clarify that a measured dose is not expected.

Note that, as specified in the definition of prescribed dose for brachytherapy, providing the total source strength and exposure time may be an alternative to providing the total dose. However, this alternative does not apply to high-dose-rate remote afterloading devices because the total dose must be specified prior to beginning the treatment.

(6) This paragraph applies to any diagnostic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131, in quantities greater than 30 microcuries. This type of misadministration is similar to the diagnostic misadministrations in proposed §§ 35.33(b) and 35.33(d). However, there are several differences:

(a) The phrase "wrong organ" in proposed § 35.33(b)(1) was deleted because the radiopharmaceutical (i.e., the correct chemical compound) and the route of administration determine the distribution of byproduct material among the organs or tissues, including the target organ as described previously for "recordable event."

(b) The thresholds for reporting in proposed § 35.33(d), "a whole body dose greater than 0.5 rem or an organ dose greater than 2 rems," were changed to "an effective dose equivalent of 5 rems or a dose equivalent of 50 rems to any individual organ" in the final

amendment. Both the public comments and the ACMUI recommendations suggested that the dose thresholds used for reporting should correspond to some kind of biological significance. These thresholds are well below the dose levels that would cause some harmful or detrimental deterministic effect as opposed to a stochastic effect. These thresholds correspond to the annual dose limits in the new 10 CFR part 20 for occupational workers, which are thresholds for reporting overexposure to the NRC.

(c) The phrase "if it involved the use of byproduct material not authorized for medical use in the license" in proposed § 35.33(d) was deleted because it is unnecessary. Under current regulations at 10 CFR 35.13, licensees are required to amend their licenses prior to using any byproduct material not authorized by their licenses; and at § 30.41(c), the licensee transferring the byproduct material must verify that the transferee is authorized by license to receive the type, form, and quantity of byproduct material to be transferred.

(d) The phrase "administration of a dosage differing by at least fivefold from the prescribed dosage" in proposed § 35.33(d) was replaced by dose thresholds for the same reasons as discussed in item (b) above.

Prescribed dosage. This definition has been modified as follows:

(1) The proposed phrase "before administration of the radiopharmaceutical" was deleted because it is part of the definition of "written directive;" thus, it is redundant.

(2) The proposed word "prescription" was replaced by "written directive." The reasons for the change are provided under the discussion of written directive.

(3) The proposed phrase "if the procedure is performed pursuant to a diagnostic referral" was deleted. A new phrase, "or in any appropriate record in accordance with the directions of authorized user for diagnostic procedures," was added to clarify that an authorized user may direct any diagnostic procedure that was not included in or departs from the diagnostic clinical procedures manual as long as the prescribed dosage is documented in an appropriate record.

Prescribed dose. This definition has been modified as follows:

(1) Gamma stereotactic radiosurgery was added to this definition. Although this type of procedure may be considered to be a single fraction teletherapy procedure, it is listed separately from teletherapy to allow for the differences between the two.

(2) The phrase "as documented in the written directive" was used to clarify where the actual prescribed dose is recorded.

(3) For brachytherapy, the phrase "the total source strength and exposure time" was used to specify an alternative way of defining the total dose. This phrase also calls attention to the importance of the exposure time. For temporary implants, after the sealed sources have been implanted and the appropriate calculations performed, administering the correct prescribed dose becomes a matter of removing the sealed sources on time (e.g., after 48 hours).

Recordable event. The term "recordable event" replaces "therapy event" as defined in proposed § 35.34(a). The term "recordable event" is used to indicate that a record and not a report is required. A recordable event is evaluated by the licensee pursuant to § 35.32(c) of the final amendment. The phrase "any therapeutic medical use not authorized by the license" in proposed § 35.34(a)(4) was deleted, because under current regulations at 10 CFR 35.13, the licensee is required to amend its license prior to using any byproduct material not authorized by its license; and at 10 CFR 30.41(c), the licensee transferring the byproduct material must verify that the transferee is authorized by license for the receipt of the type, form, and quantity of byproduct material to be transferred.

Each type of recordable event under this definition is discussed in the same sequence as it appears in the definition of recordable event in § 35.2 of the final rule:

(1) The phrase "written directive" was used to replace "prescription." Also, the phrase "a prior review of the patient's case by an authorized user or a physician under the supervision of an authorized user," in proposed § 35.34(a)(1), was deleted because if an authorized user signed the written directive, the phrase is not necessary.

(2) This type of recordable event, without daily recording, is essentially the same as published in the proposed rule with only minor editorial changes.

(3) This type of recordable event, in which dosage differs by more than 10 percent, applies to any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. This recordable event is the same as in proposed § 35.34(b)(2) but with an additional threshold of 15 microcuries; i.e., if the difference between the administered dosage and the prescribed dosage is 15 microcuries or less, it is not a recordable event even if the difference exceeds 10 percent. This threshold was added to avoid unnecessary work because of the generation of recordable events caused by small differences (e.g., if the prescribed dosage is 35 microcuries, and the administered dosage is 40 microcuries, the difference exceeds 10 percent but does not exceed 15 microcuries; thus, it is not a recordable event).

(4) This type of recordable event, in which dosage differs by more than 10 percent, applies to radiopharmaceutical therapy, other than sodium iodide I–125 or I–131, and it is the same as in proposed § 35.34(b)(2). Thus, if the administered dosage differs from the prescribed dosage by more than 10 percent, it is a recordable event. If the difference exceeds 20 percent, it is handled as a misadministration.

(5) This type of recordable event, a wrong radiation dose, applies to teletherapy and is similar to the proposed § 35.34(a)(3) with the following modifications:

(a) The phrase "calculated weekly dose" was used to replace "fractional dose" to allow a weekly comparison with the prescribed dose because many therapy departments currently utilize a weekly chart check and the ACR recommends a weekly check;

(b) The word "calculated" was added to the weekly dose to clarify that a measured dose is not expected; and

(c) The dose threshold was decreased to 15 percent of the weekly prescribed dose instead of the proposed 20 percent of fractional dose to be less than the misadministration threshold for the total administered dose.

(6) This type of recordable event, also a wrong radiation dose, applies to brachytherapy and parallels item (5) above. If the calculated administered dose differs from the prescribed dose by more than 10 percent, it is a recordable event. If the difference exceeds 20 percent, it is handled as a misadministration. As previously discussed under the definition of prescribed dose for brachytherapy, the total source strength and exposure time may be used as an alternative to the total dose, except for the high-dose-rate remote afterloading devices. For a temporary implant of 48 hours, given that the total source strength has been implanted and is therefore a fixed value, a recordable event has occurred if the sealed sources are not removed within plus or minus 4.8 hours from 48 hours.

Written directive. This term replaces the word "prescription" as defined in proposed § 35.2. Based on the lessons learned from the pilot program and suggestions made by the professional associations, the Agreement States, the ACMUI, and the public comments, the

term "written directive" should be used to avoid any potential confusion with existing medical practices or the commonly used definition of prescription.

In the introductory paragraph, the proposed phrase "or a physician under the supervision of an authorized user" was deleted because such supervision is already allowed under the current § 35.25 entitled "Supervision." Thus, this phrase was redundant and unnecessary. Also in the same paragraph, the phrase "administration of byproduct material" replaces the phrase "medical use," and the phrase "prior to the administration of byproduct material or radiation from byproduct material except as specified in paragraph (6) of this definition" was added to clarify the intent that the written directive must be prepared prior to the administration of a radiopharmaceutical or radiation.

Paragraph (1) applies to any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. This paragraph is essentially the same as paragraph (b) under the proposed definition of prescription, with the exception that the phrases "the radioisotope" and "physical form, chemical form, and route of administration" were deleted. These phrases are unnecessary because after specifying either sodium iodide I–125 or I–131, specifying the radioisotope and the chemical form would be redundant. The route of administration is not necessary because sodium iodide will always concentrate in the thyroid, regardless of the route.

Paragraph (2) applies to any therapeutic administration of a radiopharmaceutical, other than sodium iodide I–125 or I–131. This paragraph is essentially the same as paragraph (b) under the proposed definition of prescription, with the exception that it uses the phrase "the radiopharmaceutical" instead of the phrase "the radioisotope, physical form, and chemical form," because the word "radiopharmaceutical" includes the radioisotope and the chemical form. The physical form is not necessary because the route of administration must be specified.

Paragraph (3) applies to gamma stereotactic radiosurgery. This definition was separated from teletherapy in order to specify the unique types of information that need to be included in a written directive for this procedure.

Paragraph (4) applies to teletherapy procedures. This paragraph is the same as paragraph (c) in the proposed definition of prescription with the following modifications: (a) The phrase "dose per fraction" replaces the phrase "number of fractions" to emphasize the dose to be delivered in a single fraction and (b) the phrase "overall treatment period" was added to emphasize that the treatments will end after the specified number of weeks, unless the treatment period is revised by the authorized user prior to continuing.

Paragraph (5) applies to brachytherapy using high-dose-rate remote afterloading devices. This definition was separated from other brachytherapy procedures because of the need for the written directive to specify the total dose, along with other parameters, before administration of the radiation because the time period for exposure is very short when compared with other types of brachytherapy.

Paragraph (6) applies to brachytherapy procedures other than those specified in paragraph (5) above. This paragraph is essentially the same as paragraph (d) in the proposed definition of prescription. This paragraph requires the authorized user to specify, before implantation, the radioisotope, the source strengths, and the number of sources, but does not require the total dose because detailed calculations are required to determine the total dose after the sources are implanted. However, following implantation but before completion of the procedure, the authorized user must specify, among other parameters, the total source strength and exposure time. If the authorized user prefers, the total dose may be used instead of the total source strength and exposure time. This change, using total source strength and exposure time, provides an easy way of specifying the total dose and simplifies the determination of a misadministration. Since the total source strength is fixed when the sources are implanted, delivering the prescribed dose is a matter of using the correct (i.e., prescribed) exposure time. In other words, after implanting the correct sources, the exposure time (and total dose) will be correct if the sources are removed at the right time.

Section 35.8 Information Collection Requirements: OMB Approval

Paragraph (b) of this section was modified by adding § 35.32 to the list of sections that contain information collection requirements.

Section 35.25 Supervision

This section was not in the proposed rule. It is not necessary to publish this revision for public comment because the revisions are conformatory in nature. In the revised § 35.25(a)(1), the phrase "and in the licensee's written quality management program" was added to require each licensee to instruct the supervised individual in the procedures of the quality management program. Also in the revised § 35.25(a)(2), the phrase "follow the written radiation safety and quality management procedures established by the licensee" replaces the phrase "follow the procedures established by the Radiation Safety Officer" to clarify that the procedures in both the radiation safety programs and in the quality management program will be established by the licensee and must be followed by the supervised individual. Replacing the phrase "the Radiation Safety Officer" with the phrase "the licensee" is essentially no change since the Radiation Safety Officer is employed by the licensee and the licensee can delegate responsibilities.

Section 35.32 Quality Management Program

This section was renamed. NRC use of the term "quality assurance" led to some misunderstanding because under JCAHO's accreditation programs it applies to the entire hospital. Since this rule addresses only the delivery process of administering byproduct material or radiation from byproduct material, a new title, "Quality Management Program," is used in the final rule to preserve the quality concept and avoid any confusion or interference with the thousands of existing JCAHO quality assurance programs. Also, this section was designated as § 35.32 instead of the proposed designation § 35.35. This redesignation locates this section in front of § 35.33 and establishes a logical sequence. This section is very similar to the proposed § 35.35 with the following modifications.

In § 35.32(a), the phrase "to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user" replaces the proposed phrases "to prevent, detect, and correct the cause of errors in medical use" and "errors in medical use will be prevented." This modification states the objective of the QM program in a positive manner rather than a negative manner. Also, this modification was made in response to many public comments and workshop recommendations that the word "error" is too broad, and that the proposed language implies that all errors must be prevented. Also in the same paragraph, the phrase "as applicable" was added to clarify that this section is applicable only to those part 35 licensees who perform procedures for which a written directive is required.

The following proposed objectives were deleted in response to public comments and workshop recommendations:

(a) The proposed objective 1 "ensure that any medical use is indicated for the patient's medical condition" was deleted because it is not necessary. When directing the administration of byproduct material, it is already part of the authorized user's responsibility as a physician to ensure that the administration is indicated for the patient's medical condition. Further, the objectives of the QM program can nevertheless be achieved because the authorized user is required to sign a written directive prior to the administration.

(b) The proposed objective 3 became unnecessary after the diagnostic components of the QM program for most radiopharmaceuticals were deleted (as discussed previously).

(c) The proposed objective 4 was deleted because logically it would be unnecessary if the required condition of proposed objective 5 was met.

Public comments and workshop recommendations suggested that each objective should not start with the word "ensure" because trying to ensure that each objective is achieved has the same connotation as preventing all errors. In this manner, the word "ensure" produced unnecessary frustration. Thus, the word "ensure" was deleted from each objective in the final rule. Also, as discussed previously, the phrase "written directive" replaces the proposed word "prescription."

Each objective retained in the final rule is discussed below.

(1) Objective 1 is essentially the same as the proposed objective 2 except that: (a) The phrase "prior to each administration" replaces the proposed phrase "prior to any medical use" to clarify the intent to narrowly focus on the delivery to the patient of the byproduct material or radiation, (b) the different types of therapy procedures, including gamma stereotactic radiosurgery, were listed separately for ease of understanding, and (c) the phrase "sodium iodide" was added to exclude all other iodine compounds such as iodohippurate, which delivers a much smaller radiation dose to the thyroid as compared to an equal radiopharmaceutical dosage of sodium iodide.

Although many commenters questioned the need for requiring a written directive for diagnostic procedures involving quantities greater than 30 microcuries of either sodium iodide I–125 or I–131, the final rule retains this provision. The purpose of this provision is to put the authorized user in direct control of ordering and delivering a dosage greater than 30 microcuries of either sodium iodide I–125 or I–131. This dosage would deliver about 50 rems dose equivalent to the thyroid. However, in the reported mistakes of administration, there have been several cases of a technologist misinterpreting the referring physician's request, not checking with the authorized user, and administering millicurie amounts of sodium iodide I–131 instead of the requested microcurie amounts. Inadvertent administration of millicurie quantities of I–131 can cause significant adverse effects to the patient, such as ablating the thyroid gland or impairing its proper function. If the requirement for a written directive had been in effect at that time, a technologist could not administer a dosage greater than 30 microcuries of either sodium iodide I–125 or I–131 without a written directive dated and signed by the authorized user, and thus these events would probably have been prevented.

(2) Objective 2 is essentially the same as proposed objective 6 with the following modifications: (a) The phrase "by more than one method" was added to clarify the intent (e.g., ask the patient's name and also ask the patient for any one of the following: birth date, address, social security number and confirm this by comparing it with corresponding information in the patient's record; or check the name on the patient's ID bracelet; or ask for the patient's signature), (b) the proposed phrase "or the diagnostic referral" was deleted to conform with the removal of the diagnostic components.

(3) Objective 3 is essentially the same as the proposed objective 8 with the exception of using the phrase "final plans of treatment and related calculations" instead of the proposed phrase "treatment planning." The phrase "treatment planning" is not static and is often thought of as a continuing activity of the authorized user as the patient progresses. Also, the professional associations (e.g., ACR) stated that, initially, there may be several alternative plans of treatment, and following a discussion between the physicist or dosimetrist and the authorized user, a final plan of treatment would be selected and used. Thus, the change was necessary to avoid confusion as to which plan needed to be in accordance with the written directive. Also, gamma stereotactic radiosurgery was added to conform with similar changes, as discussed previously.

(4) Objective 4 is the same as the proposed objective 5 with the exception that the proposed phrase "or a diagnostic referral and clinical procedures manual" was deleted to conform with the removal of the diagnostic components.

(5) Objective 5 is essentially the same as the proposed objective 7 with the following modifications: (a) The phrase "and appropriate action is taken" was added to clarify the intent to have appropriate action taken after the unintended deviations are identified based on a recommendation from the pilot program participants and (b) the proposed phrase "or a diagnostic referral and clinical procedures manual" was deleted to conform to the removal of the diagnostic components.

Section 35.32(b) is essentially the same as proposed § 35.35(b) with the following modifications:

Section 35.32(b)(1) is the same as the first sentence of the proposed § 35.35(b)(1) except for the following changes: (a) The word "review" replaces the proposed phrase "comprehensive audit" to use a term more understandable to licensees based on lessons learned from the pilot programand (b) the phrase "including, since the last review, an evaluation of (i) a representative sample of patient administrations, (ii) all recordable events, and (iii) all misadministrations" was added to clarify the content of the review based on lessons learned from the pilot program.

Section 35.32(b)(2) is the same as the second sentence of the proposed § 35.35(b)(1) except for the following changes: (a) The word "licensee" replaces the proposed phrase "licensee's management" to simplify the final rule language, and (b) the phrase "if required, make modifications to meet the objectives of paragraph (a) of this section" replaces the proposed phrase "promptly implement modifications within 30 days that will prevent the recurrence of errors in medical use" to give the responsibility to the licensee for determining whether or when modifications are needed. This is in keeping with a performance-based approach.

Section 35.32(b)(3) is the same as the last sentence of proposed § 35.35(b)(1) with the exception of using the phrase "review, including the evaluations and findings of the review" instead of the proposed phrase "audit and management evaluation" to conform to the changes made in § 35.32 (b)(1) and (b)(2) and to use terms more understandable to licensees.

Section 35.32(c) replaces the proposed § 35.34(c) and a part of § 35.34(f)(2) pertaining to therapy events. Many

commenters and participants in the pilot program stated that the proposed recordkeeping and reporting requirements were too complicated and confusing. In the final rule, proposed requirements related to diagnostic events were eliminated following recommendations of the ACMUI, and the term "recordable event" replaces the proposed term "therapy event." If a recordable event occurs, the final rule allows the licensee to respond to that event within the institution, much like proposed § 35.34(a), but without requiring that a report be written to licensee management. The proposed requirements in §§ 35.34(c) and 35.34(f)(2) for therapy events were greatly simplified and consolidated in this paragraph to reduce the level of detail and avoid unnecessarily burdensome costs based on lessons learned from the pilot program.

The modifications are (a) the word "licensee" replaces the proposed phrases "Radiation Safety Officer" and "the licensee management" to provide flexibility for the licensee to determine the appropriate personnel to investigate the cause or take corrective action, (b) the phrase "assembling the relevant facts including the cause" replaced the proposed phrase "promptly investigate the cause" to reduce the emphasis on the speed of the investigation, and (c) the recordkeeping requirement was consolidated and simplified. The record retention period was shortened to three years; the proposed ten years is not necessary based on the current inspection frequency.

Many commenters asked about the meaning of the phrase "in an auditable form." The phrase means that the licensee must be able to produce a legible record, or copy of the record, within a reasonable period of time upon request by an NRC inspector. The records may be maintained in any location or by any means, including electronic or microfiche.

Section 35.32(d) is the same as § 35.34(f)(1) with the exception that two paragraphs are separated for clarity.

Section 35.32(e) is a simplified version of the proposed § 35.35(b)(2). In response to lessons learned from the pilot program and recommendations from the professional associations, the Agreement States, and the ACMUI, the final rule allows the licensee to modify its QM program to increase the efficiency of the program, i.e., the licensee may change its QM program provided the effectiveness of the QM program is not decreased. For example, suppose the licensee were conducting a monthly review of the QM program pursuant to § 35.32(b), but subsequently decided to review the QM program twice a year. Other changes are (a) the time period for submitting the program modifications to NRC was extended to 30 days from the proposed 15 days to allow more time to prepare the submission and (b) the proposed sentence related to NRC's prior approval of program modifications was deleted because this requirement is no longer necessary. Following the submittal of the program modifications, the NRC has the option of stopping the licensee from continuing to use the modified program if the NRC determines that the modifications would decrease the effectiveness of the program, or the option of obtaining more information, if required.

Section 35.32(f)(1) is the same as proposed § 35.35(c)(1) with the exception that the phrase "as applicable" was added to clarify that some Part 35 licensees will not be subject to this provision, i.e., those licensees administering byproduct material for which a written directive is not required.

Section 35.32(f)(2) is essentially the same as the proposed § 35.35(c)(2) with the following modifications: (a) The proposed phrase "designed in accordance with this section" was deleted because it is unnecessary, and (b) a new phrase, "along with a copy of the program," was added to require existing licensees to submit a copy of their program to the NRC on or before the effective date of the rule. Having a copy of the program will facilitate any inspections conducted prior to a license renewal date. The proposed § 35.35(c)(3) was unnecessary and was deleted because of the requirement to submit a copy of the QM program to the NRC.

Section 35.33 Notifications, Reports, and Records of Misadministrations

This section replaces the proposed § 35.33 (d) through (f) and § 35.34 (d) through (g). The final rule language was greatly simplified as compared to the proposed rule. The definitions of misadministration and recordable event were moved to § 35.2 and the two proposed sections §§ 35.33 and 35.34 were consolidated into a single section; thus, duplicative language was avoided.

Section 35.33(a) specifies the actions that a licensee must take when a misadministration is discovered and is essentially the same as the combination of the proposed § 35.33(d) and § 35.34(d) with certain modifications. The requirement to notify the referring physician was retained because the NRC expects that the authorized user and the referring physician would jointly decide whether and how to inform the patient.

For clarity, § 35.33(a) was divided into four parts. Each part is discussed below.

Section 35.33(a)(1) requires that the licensee notify the NRC by telephone. Two modifications were made to the proposed requirement. The phrase "the NRC Operations Center no later than the next calendar day" replaces the proposed phrase "the appropriate NRC Regional Office listed in Appendix D of 10 CFR Part 20 no later than the next Federal Government working day." During weekends or on holidays, the NRC Regional Offices are closed, but the NRC Operational Center remains open. Thus, by reporting to the NRC Operations Center, a licensee may make telephone notifications any calendar day and facilitate a timely and appropriate response from NRC.

Secondly, for misadministrations involving certain diagnostic dosages and radiopharmaceuticals, a notification requirement was added. The NRC believes that these occurrences warrant a telephone notification to the NRC because the definition of this type of misadministration requires that dose thresholds be exceeded, i.e., thresholds of 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ, as a result of one of four specific types of mistakes. The telephone notification will allow NRC to promptly take any necessary actions based on the circumstances, e.g., dispatch an inspector or consultant or notify other licensees of potential generic problems.

Section 35.33(a)(2) requires that the licensee submit a written report to the NRC. This requirement is the same as proposed with the exception that the phrase "and if the patient was informed, what information was provided to the patient" was added to complement the changes in § 35.33(a)(4) about furnishing a report in writing to the patient.

Section 35.33(a)(3) requires that the licensee notify the patient. This requirement is the same as the proposed requirement. Patients need to be promptly informed when a misadministration occurs so that they, in consultation with their personal physician, are allowed to make timely decisions regarding remedial and prospective health care. However, the licensee still has the responsibility to provide appropriate medical care to the patient, including any necessary remedial care as a result of the misadministration. To serve as a reminder for licensees, the phrase "including any necessary remedial care as a result of the misadministration" was added after the phrase "any

appropriate medical care" to the last sentence of § 35.33(a)(3).

Next-day notification of NRC was also retained because NRC needs to be informed promptly to take necessary actions. Examples of these actions include alerting other licensees or equipment manufacturers of a generic problem to prevent similar events, ensuring that the licensee takes corrective actions to prevent recurrence, and dispatching NRC inspectors or consultants, if warranted, to assess the facts surrounding the misadministration.

Section 35.33(a)(4) requires that the licensee furnish a written report to the patient if the patient was previously notified. This requirement is the same as proposed with the exception of allowing, as an alternative, a brief description of both the event and the consequences, as they may affect the patient, to be furnished to the patient.

Section 35.33(b) requires that the licensee keep records of each misadministration. This requirement is the same as § 35.34(f)(2) with the exception that the record retention period was reduced to 5 years from the proposed 10 years to reduce licensees' costs because a 5-year retention period is adequate for inspection purposes given that the current inspection frequency is less than 5 years.

Some commenters stated that there appeared to be an inconsistency between § 35.33(b) and § 35.33(a)(2). Section 35.33(a)(2) states that the report must not include the patient's name or other information that could lead to identification of the patient, but this paragraph states that the record must contain the patient's name. There is no inconsistency because the written report submitted to the NRC, as required by § 35.33(a)(2), could be released to the public if requested under the Freedom of Information Act. Thus, in order to protect the privacy of the patient, it would not be appropriate for this report to include the patient's name. On the other hand, the record required under § 35.33(b) is maintained at the licensee's facility, thus, the patient's name must be included since the relevant records are maintained according to the patient's name or identification number, e.g., social security number.

Section 35.33(c) is the same as proposed § 35.34(g) except for a minor editorial change.

V. Implementation Plan and Agreement State Compatibility

The effective date of this amendment will be January 27, 1992. On or before the effective date, each applicable part 35 licensee must implement the QM program and submit to the NRC a copy of the program and a written certification that the program has been implemented. After the effective date, each application for a new license or renewal under part 35, as applicable, will have to include a QM program as part of the application. The final guide, Regulatory Guide 8.33, "Quality Management Program," provides guidance on how to develop an acceptable QM program. On the effective date, part 35 licensees will be subject to the revised recordkeeping and reporting requirements of this amendment.

Because this amendment has safety significance for the Agreement State licensees as well as the NRC licensees, this final amendment is an item of compatibility for the Agreement States. All definitions contained in this rulemaking are Division 1 items of compatibility. The definitions contained in this rulemaking must be the same for all NRC and Agreement State licensees so that consistency will be maintained for the events reported quarterly to the Congress. Also, in order to have any meaningful analysis of the data from misadministrations, the criteria for what is to be reported needs to be consistent across all NRC and Agreement State licensees. Agreement States may require additional events to be recorded or reported (e.g., misadministrations involving accelerator-produced radioactive material that is not licensed by the NRC).

Additionally, the Commission believes that §§ 35.32 and 35.33 should be Division 2 items of compatibility because the QM programs required by the rule are necessary to ensure adequate protection of the public health and safety. The Agreement States regulate machine-produced radiation, naturally occurring and accelerator-produced radioactive material, as well as byproduct material; thus, the QM programs of their licensees need to be multi-purpose, of broader scope, and not limited to byproduct material considerations in order to cover the diagnostic and therapeutic modalities not regulated by the NRC (e.g., x-ray, and LINAC). Thus, the Agreement States will be allowed to establish QM requirements that are more stringent than NRC's requirements, but not less stringent. In accordance with existing NRC policy, the Commission expects the Agreement States to implement these new requirements by January 25, 1995. However, under the existing NRC Agreements, each Agreement State has the authority to implement the QM program by license conditions prior to establishing a regulation within the required 3-year period.

Although the Agreement States recommended that the revised final rule should be republished for public comment, this action is not necessary because the final rule is generally consistent with the scope of the proposed rule and does not pose any incremental burdens, and because the changes made to the rule are responsive to the extensive public comments and workshops that are part of the public record for this rulemaking. The proposed rule contained provisions for both diagnostic and therapeutic administrations of byproduct material or radiation from byproduct material. The scope of the final rule has been reduced by eliminating the provisions for most diagnostic administrations while retaining the other proposed provisions for therapeutic administrations and any administrations of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. Therefore, since in the proposed rule the public was given notice and an opportunity for comment on all the provisions that remain in the final rule, there is no need to republish those provisions.

VI. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this final amendment is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The amendment requires each applicable NRC licensee to implement a quality management program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user physician. This performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the QM program and misadministrations.

The implementation of a QM program will help ensure that the byproduct material will be administered as directed by the authorized user physician and, thus, will likely reduce unnecessary radiation exposures. It is expected that there will be no increase

in radiation exposure to the public or to the environment beyond the exposures currently resulting from delivering the byproduct material or radiation from byproduct material to the patient. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0010.

Public reporting burden for this collection of information is estimated to be 6,920 hours per year (for 3,300 applicable NRC and Agreement State licensees), or an average of about 2 hours per year per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Reports Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0010), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for the final amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available from Dr. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this amendment will not have a significant economic impact on a substantial number of small entities. The amendment affects about 1,100 NRC licensed institutions under 10 CFR part 35. Of these, about 150 are issued to physicians in private practice. Under the size standards adopted by the NRC (50 FR 50241; December 9, 1985), some of these licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act (average gross annual receipts do not exceed $3.5 million for an institution and do not exceed $1 million for a private practice physician). The number of licensees that would fall into the small entity category is estimated to be a very small percentage of the total number of licensees and does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The amendment requires each applicable NRC licensee to implement a QM program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user physician. This performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the QM program and misadministrations.

The Commission believes that most licensees currently have a QA program based on voluntary standards established by JCAHO and professional associations. Since this amendment is a performance-based rule, a licensee using a voluntary program may not need to replace its existing program, rather only supplement it, thereby ensuring that the objectives of the rule are being met. Furthermore, all licensees under 10 CFR part 35 or similar Agreement State regulations are currently subject to the existing reporting and recordkeeping requirements which, except for certain clarifications, are not significantly different from the reporting and recordkeeping requirements in the final amendment. Therefore, there should not be a significant economic impact on these small entities. (See the Regulatory Analysis for the anticipated economic impact of this regulation on licensees.)

Backfit Analysis

The NRC has determined that the backfit analysis is not required for this final amendment, because the backfit rule, 10 CFR 50.109, applies only to new requirements for power reactors (50 FR 38097, September 20, 1985). However, as noted above, the NRC has prepared a regulatory analysis examining the benefits and impacts of the final amendment.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

Text of Final Regulations

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 35.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub L.

85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In appendix C to part 2, supplement VI, paragraph C.7. is removed; paragraph C.8. is redesignated as C.7.; paragraphs A.4., B.3. and D.4. are added; and paragraphs C.6. and D.3 are revised to read as follows:

Appendix C to Part 2—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. * * *

4. Failure to follow the procedures of the quality management program, required by § 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient.

B. * * *

3. Failure to follow the procedures of the quality management program, required by § 35.32, that results in substantial overexposure (e.g., 50 percent greater than the prescribed dose) to a patient.

C. * * *

6. Substantial failure to implement the quality management program as required by § 35.32; failure to follow the procedures of the quality management program that results in a misadministration; or failure to report a misadministration.

D. * * *

3. Failure to follow the procedures of the quality management program, or failure to conduct the annual review or failure to take corrective actions as required by § 35.32; or

4. Failure to keep the records required by §§ 35.32 or 35.33.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.32(a), 35.49, 35.50 (a)–(d), 35.51 (a)–(c), 35.53 (a)–(b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)–(f), 35.75, 35.80 (a)–(e), 35.90, 35.92(a), 35.120, 35.200 (b) and (c), 35.204 (a) and (b), 35.205, 35.220, 35.300, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)–(f), 35.634 (a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.32 (b)–(f), 35.33 (a)–(b), 35.36(b) 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.200(c), 35.204(c), 35.300(b), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In Subpart A—General Information, § 35.2, the term misadministration is revised; and the terms diagnostic clinical procedures manual, prescribed dosage, prescribed dose, recordable event, and written directive are added in alphabetical order:

§ 35.2 Definitions.

* * * * *

Diagnostic clinical procedures manual means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

* * * * *

Misadministration means the administration of:

(1) A radiopharmaceutical dosage greater than 30 microcuries of either sodium iodide I–125 or I–131:

(i) Involving the wrong patient or wrong radiopharmaceutical, or

(ii) When both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries.

(2) A therapeutic radiopharmaceutical dosage, other than sodium iodide I–125 or I–131:

(i) Involving the wrong patient, wrong radiopharmaceutical, or wrong route of administration; or

(ii) When the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(3) A gamma stereotactic radiosurgery radiation dose:

(i) Involving the wrong patient or wrong treatment site; or

(ii) When the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

(4) A teletherapy radiation dose:

(i) Involving the wrong patient, wrong mode of treatment, or wrong treatment site;

(ii) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

(iii) When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

(iv) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(5) A brachytherapy radiation dose:

(i) Involving the wrong patient, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(ii) Involving a sealed source that is leaking;

(iii) When, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) When the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(6) A diagnostic radiopharmaceutical dosage, other than quantities greater than 30 microcuries of either sodium iodide I–125 or I–131, both:

(i) Involving the wrong patient, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) When the dose to the patient exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ.

* * * * *

Prescribed dosage means the quantity of radiopharmaceutical activity as documented:

(1) In a written directive; or

(2) Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

Prescribed dose means

(1) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(2) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(3) For brachytherapy, either the total source strength and exposure time or the

total dose, as documented in the written directive.

* * * * *

Recordable event means the administration of:

(1) A radiopharmaceutical or radiation without a written directive where a written directive is required;

(2) A radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(3) A radiopharmaceutical dosage greater than 30 microcuries of either sodium iodide I–125 or I–131 when both:

(i) The administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage, and

(ii) The difference between the administered dosage and prescribed dosage exceeds 15 microcuries;

(4) A therapeutic radiopharmaceutical dosage, other than sodium iodide I–125 or I–131, when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;

(5) A teletherapy radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or

(6) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.

* * * * *

Written directive means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (6) of this definition, containing the following information:

(1) For any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or 1–131: the dosage;

(2) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131: the radiopharmaceutical, dosage, and route of administration;

(3) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(4) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(5) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(6) For all other brachytherapy:

(i) Prior to implantation: the radioisotope, number of sources, and source strengths; and

(ii) After implantation but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

5. In Subpart A—General Information, § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.32, 35.33, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

6. In Subpart B—General Administrative Requirements, § 35.25, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 35.25 Supervision.

(a) * * *

(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of byproduct material and in the licensee's written quality management program;

(2) Require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the regulations of this chapter and the license conditions with respect to the use of byproduct material; and

* * * * *

7. In Subpart B—General Administrative Requirements, § 35.32 is added to read as follows:

§ 35.32 Quality management program.

(a) Each applicant or licensee under this part, as applicable, shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the following specific objectives:

(1) That, prior to administration, a written directive [1] is prepared for:

(i) Any teletherapy radiation dose;

(ii) Any gamma stereotactic radiosurgery radiation dose;

(iii) Any brachytherapy radiation dose;

(iv) Any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131; or

(v) Any therapeutic administration of a radiopharmaceutical, other than sodium iodide I–125 or I–131;

(2) That, prior to each administration, the patient's identity is verified by more than one method as the individual named in the written directive;

(3) That final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(4) That each administration is in accordance with the written directive; and

(5) That any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(b) The licensee shall:

(1) Develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(i) A representative sample of patient administrations,

(ii) All recordable events, and

(iii) All misadministrations

to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(2) Evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of paragraph (a) of this section; and

(3) Retain records of each review, including the evaluations and findings of

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[1] If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision.

Also, a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose.

If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive.

the review, in an auditable form for three years.

(c) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(1) Assembling the relevant facts including the cause;

(2) Identifying what, if any, corrective action is required to prevent recurrence; and

(3) Retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if any, was taken.

(d) The licensee shall retain:

(1) Each written directive; and

(2) A record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in paragraph (a)(1) above, in an auditable form, for three years after the date of administration.

(e) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the appropriate NRC Regional Office within 30 days after the modification has been made.

(f)(1) Each applicant for a new license, as applicable, shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 a quality management program as part of the application for a license and implement the program upon issuance of the license by the NRC.

(2) Each existing licensee, as applicable, shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 by January 27, 1992 a written certification that the quality management program has been implemented along with a copy of the program.

8. In Subpart B—General Administrative Requirements, § 35.33 is revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) For a misadministration:

(1) The licensee shall notify by telephone the NRC Operations Center [2] no later than the next calendar day after discovery of the misadministration.

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient" in this section), and if not, why not, and if the patient was notified, what information was provided to the patient. The report must not include the patient's name or other information that could lead to identification of the patient.

(3) The licensee shall notify the referring physician and also notify the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or that, based on medical judgment, telling the patient would be harmful. The licensee is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the licensee shall notify the patient as soon as possible thereafter. The licensee may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the patient was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for five years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

Dated at Rockville, Maryland, this 3rd day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-16321 Filed 7-24-91; 8:45 am]

BILLING CODE 7590-01-M

[2] The commercial telephone number of the NRC Operations Center is (301) 951-0550.

federal register

Thursday
July 25, 1991

Part V

Federal Election Commission

11 CFR Parts 102 and 113
Use of Excess Funds; Final Rules

FEDERAL ELECTION COMMISSION

[Notice 1991-12]

11 CFR Parts 102 and 113

Use of Excess Funds

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 102.3, 113.1 and 113.2(d), regarding disposition of excess campaign or donated funds by Members of Congress, to implement the Ethics Reform Act of 1989, Public Law 101-194. The Ethics Reform Act amended section 313 of the Federal Election Campaign Act ("FECA" or "the Act"), codified at 2 U.S.C. 439a, to prohibit any Member of Congress who serves in the 103d or a later Congress from converting excess campaign or donated funds to personal use as of the first day of such service. Those Members who held office on January 8, 1980, who formerly could convert unlimited amounts of excess funds to personal use, may now convert only the amount on hand as of November 30, 1989, the date of enactment of the Ethics Reform Act. Further information is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463 (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 102.3, 113.1, and 113.2, regarding the disposition of excess campaign or donated funds.

On April 24, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 55 FR 18777. One written comment was received in response to the notice.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

The Federal Election Campaign Act Amendment of 1979, Public Law 96-187, amended 2 U.S.C. 439a, regarding the disposition of excess campaign or donated funds. The 1979 amendment prohibited any candidate or Member of Congress not in office on January 8, 1980, from converting any such funds to personal use, other than to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. Funds not used for this purpose may be contributed to any tax-exempt charitable organization or used for any other lawful purpose, including unlimited transfers to any national, State, or local committee of any political party.

The Ethics Reform Act of 1989, Public Law 101-194, further amended this section to prohibit any Member of Congress who serves in the 103d or a later Congress from converting excess campaign or donated funds to personal use as of the first date of such service. (The 103d Congress will convene on January 3, 1993.) Also, a Member of Congress who held office on January 8, 1980, can now convert to personal use only the "unobligated balance" of campaign or donated funds as of the date of enactment of the Ethics Reform Act, November 30, 1989.

These rules amend 11 CFR 102.3, 113.1 and 113.2, to reflect the new statutory limits on conversion of excess funds to personal use. They provide two alternative methods for grandfathered Members to compute the "unobligated balance" which is eligible for such conversion. Under the first alternative, qualified Members who choose to convert no more than the value of their cash assets as of November 30, 1989, may do so by simply reporting this action. The second alternative authorizes Members to convert nonliquid committee assets held on that date (or a cash amount equal to the value of such assets) to personal use, provided that new reporting requirements are met. The new rules are consistent with Advisory Opinion 1990-26, in which the Commission permitted the November 1989 value of a computer owned by a grandfathered Member's authorized committee to be included in the balance eligible for conversion under certain conditions.

One comment was received on this rulemaking. The Internal Revenue Service found no conflict between this proposal and the Internal Revenue Code or the regulations promulgated under it.

Part 102—Registration, Organization, and Recordkeeping by Political Committees

Section 102.3—Termination of Registration

All terminating committees are required to report how residual funds will be used. 11 CFR 102.3(a). New paragraph (a)(2) adds a requirement that authorized committees of non-grandfathered Members include in their termination reports a statement signed by the committee's treasurer, stating that no noncash committee assets will be converted to personal use. This section also requires terminating committees of grandfathered Members to comply with the new provisions of § 113.2 before converting funds to personal use.

Part 113—Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities

Section 113.1—Definitions

New paragraph 113.1(f) defines the term "qualified Member" for the purpose of converting excess funds to personal use under new 11 CFR 113.2(e). The definition includes all individuals who served as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

Section 113.2 Use of Funds

Paragraph (d) has been amended to delete the phrase stating that grandfathered Members may convert unlimited amounts of excess funds to personal use. This paragraph now states that no excess funds may be converted to personal use except as set forth in paragraph (e), below.

Paragraph (e) allows qualified Members to convert to personal use no more than the unobligated balance in their campaign accounts as of November 30, 1989. The two alternatives they may use in computing this balance are set forth at paragraphs (e)(1) (i) and (ii).

The first alternative, found at paragraph (e)(1)(i), is available to qualified members who choose to convert no more than the value of their committee's cash assets on November 30, 1989, to personal use. (While the remainder of this discussion uses the singular "committee," it applies to all authorized committees, if a Member has more than one such committee.) To compute the value of its net cash assets, the committee first calculates its cash on hand on November 30, 1989, as defined

in 11 CFR 104.3(a)(1), and then subtracts its debts and obligations on that date. The § 104.3(a)(1) definition includes currency; the balance on deposit in banks, savings and loan institutions, and other depository institutions; travelers' checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.

A qualified Member who chooses this alternative also has the option of converting noncash campaign assets to personal use, by counting the fair market value of each item so converted against the total unobligated (cash) balance. For example, if the authorized committee's cash assets on November 30, 1989, totaled $10,000, and the committee owns two vehicles, each with a fair market value of $5,000, the Member may convert to personal use either the $10,000; the two vehicles; or $5,000 and one vehicle.

The second alternative, set forth at paragraph (e)(1)(ii), permits qualified Members to add the value of unliquidated committee assets and receivables as of November 30, 1989, to the unobligated balance, if certain requirements are met. Unliquidated committee assets in this context include noncash assets previously purchased by the committee, such as vehicles, computers, and office equipment. The term also includes other assets received as in-kind contributions on or before November 30, 1989, but not liquidated until a later reporting period, such as contributions of stocks, bonds, and art objects.

To take advantage of this higher limit, a Member must file a separate Memo Entry Schedule A as an amendment to the 1989 year end report (covering July 1 through December 31, 1989). This memo Schedule A must itemize each converted asset, giving the date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description explaining how the asset's value was ascertained. In addition, the committee must disclose the disposition made of each such asset, including its fair market value at the date of sale or other disposition. This should be disclosed in the committee's termination report unless the asset was sold or distributed during an earlier period and included in the report covering that period.

Commission regulations use the term "usual and normal charge for such goods" when discussing the valuation of "in kind" contributions. 11 CFR 100.7(a)(1)(iii)(B). The Commission has incorporated this approach in its Advisory Opinions dealing with the sale of campaign assets. See Advisory Opinions 1985-1 and 1986-14. The regulation follows this same approach in determining whether an asset has been sold for its fair market value.

Members who choose this second alternative may also treat committee receivables as other assets and include them in the unobligated balance which is eligible for conversion. Given the need to ascertain a definite amount, these receivables may only include those debts and loans reported as owed to the committee as of November 30, 1989, and itemized on the committee's year end report for 1989—provided that such receivables are actually collected by the committee prior to its termination. In addition, committee receivables in the form of vendor credits or deposit refunds may be included in calculating the unobligated balance. These types of receivables must be itemized on Schedule C or D of the committee's 1989 year end report or in an amendment thereto, in order to be included.

The Commission emphasizes that the more complicated procedures must be followed only by Members who wish to convert to personal use more than the value of their net cash assets on November 30, 1989. Those choosing to convert no more than the cash balance may simply report this action, no matter how great the value of their non-cash assets or how large the committee's other receivables on that date. However, the disposition of these other assets and receivables still must be reported.

To illustrate, assume that a Member's potential unobligated balance on November 30, 1989, consisted of $80,000 in cash assets and $20,000 in nonliquid assets, for a total of $100,000. If the Member chooses to convert more than $80,000 to personal use, he or she must follow the nonliquid asset procedures for the amount over $80,000. However, if the Member chooses to convert to personal use no more than $80,000, the simpler cash asset procedures can be followed. These procedures could be used, for example, if the Member chooses to convert $50,000 to personal use and donate the remaining $50,000 to charity or to a political party committee, or to use it in any other manner consistent with 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

The Commission sought comments in the NPRM on whether this rule should limit conversion to liquid assets, a limitation seemingly implied by the statutory use of the term "unobligated *balance*" (emphasis added). The Ethics Reform Act's legislative history is silent on this point, in that the Senate debate (the only substantive discussion of this provision in the Act's legislative history) focused on the ability to use excess funds, rather than on what constitutes excess funds. See 135 Cong. Rec. S 15966-71 (daily ed., Nov. 17, 1989).

However, the Commission has previously construed "excess funds" to include nonliquid committee assets. In Advisory Opinion 1981-11, the Commission held that the term "excess campaign funds" can include noncash items—in that case a mailing list—determined by the candidate to be no longer needed to defray committee expenses. See also Advisory Opinion 1984-50 (same reasoning applied to political art). Each of these Advisory Opinions allowed a candidate to transfer the item(s) in question from the candidate's principal campaign committee to a national party committee under the "excess funds" provision of 2 U.S.C. 439a. In addition, in Advisory Opinion 1982-33, the Commission permitted a retired Senator to convert a car owned by his principal campaign committee to his personal use, in addition to the committee's cash assets. This regulation follows this approach.

This section also provides that if the unobligated balance subsequently drops below its November 30, 1989, level, it may be restored back to that level, and the full amount converted to personal use. This approach is consistent with the statutory language, which in pertinent part provides: "The amendment [prohibiting personal use] shall apply . . . to the use of . . . amounts totaling *more than the amount* [of] . . . the unobligated balance on hand on [November 30, 1989]" (Pub. L. 101-194, § 504(b), 103 Stat. 1755) (emphasis added).

The section permits proceeds from the sale of noncash assets (those obtained both before and after November 30, 1989) to be used to restore an account whose balance has fallen below its November 30, 1989, level, back up to that level. For such sales to be valid, the Member must show that the seller received no more than the fair market value for the asset as of the date of the sale. Committee receivables other than debts and loans, e.g., interest income, and refunded rent and utility deposits, may also be used for this purpose.

Thus, for example, if a Member's unobligated balance on November 30, 1989, was $50,000, but it later dropped to $25,000, subsequent lawfully received contributions and other committee income could be used to restore it to the $50,000 level. The full unobligated balance of $50,000 could still be converted to personal use, despite its post-November 1989 shrinkage.

Under either alternative, if noncash assets are sold or other moneys received

in amounts which would bring the unobligated balance above its November 30, 1989, level, these additional sums may not be converted to personal use. Rather, they must be used for the other purposes set forth in 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

Thus, the Commission stresses that, using this same example, no more than $50,000 could ever be converted to personal use. If the Member converted $10,000 of the original $50,000 to personal use and the balance later dropped to $25,000, the balance that could later be restored for personal use conversion would be reduced to $40,000 ($50,000 less the $10,000 which had already been converted). Any additional amounts would have to be used for the other purposes set forth in 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

The Commission recognizes that some Members may already have converted some portion of their November 30, 1989, unobligated balance to personal use. Any such amounts count as drawdowns on the ceiling eligible for conversion. For example, a Member whose November 30, 1989, unobligated balance was $50,000, who has already converted $10,000 to personal use, is now limited to $40,000 in future conversions.

Finally, the Commission notes that there is no time limit for qualified Members who do not serve in the 103rd or a later Congress who want to convert their unobligated balance to personal use. The only limitation is of that amount, i.e., the converted amount may not exceed the November 30, 1989, unobligated balance.

New paragraph 113.2(f) clarifies that nothing in 11 CFR part 113 is intended to supersede other Federal laws, outside the Commission's jurisdiction, which also regulate the use of campaign or donated funds. See, e.g., newly enacted 2 U.S.C. 59e(d), Public Law 101-520, § 310(d)(Nov. 5, 1990), which prohibits the use of any funds which are not specifically appropriated for Members' official expenses from being used to defray such expenses. In addition, relevant state laws may affect whether a particular type of personal use qualifies as a "lawful purpose" under section 439a, and are therefore not superseded.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the rules reflect statutory amendments to the Federal Election Campaign Act concerning the disposition of excess campaign and donated funds. This does not impose a significant economic burden because any small entities affected are already required to comply with the Act's requirements in this area.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements, Campaign funds.

11 CFR Part 113

Campaign funds, Political candidates, Elections.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Part 102 is amended by redesignating paragraph (a) of § 102.3 as paragraph (a)(1), and by adding paragraph (a)(2) to read as follows:

§ 102.3. Termination of registration (2 U.S.C. 433(d)(1)).

(a) * * *

(2) An authorized committee of a qualified Member, as defined at 11 CFR 113.1(f), shall comply with the requirements of 11 CFR 113.2 before any excess funds are converted to such Member's personal use. All other authorized committees shall include in their termination reports a statement signed by the treasurer, stating that no noncash committee assets will be converted to personal use.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

3. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

4. Paragraph (f) is added to § 113.1, to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a)

* * * * *

(f) *Qualified Member.* "Qualified Member" means an individual who was serving as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

5. Paragraph (d) is revised and paragraphs (e) and (f) are added to section 1132 to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a)

* * * * *

(d) May be used for any other lawful purpose, except that, other than as set forth in paragraph (e) of this section, no such amounts may be converted by any person to any personal use, other than: to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, or to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign.

(e)(1) Except as limited by paragraph (e)(5) of this section, a qualified Member who serves in the 102d or an earlier Congress may convert to personal use no more than the unobligated balance of excess funds as of November 30, 1989. This unobligated balance shall be calculated under either paragraph (e)(1) (i) or (ii) of this section.

(i) *Cash assets.* The Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

(ii) *Cash Plus Nonliquid Assets.*

(A) The Member may convert unliquidated committee assets held by his or her authorized committee(s) on November 30, 1989; or the value of such assets may be added to the value of the committee(s)' cash assets under paragraph (e)(1)(i) of this section to determine the amount which is eligible for conversion. In either case, prior to conversion, the committee shall amend its 1989 year end reports to indicate, as memo entries to Schedule A, the assets to be converted. These amendments shall list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. The committee shall also disclose the disposition made of each such asset, including its fair market value on the date of sale or other disposition, in its termination report, unless the asset was sold or otherwise disposed of during an earlier period and included in the report covering that period.

(B) The Member may add the value of debts and loans reported as owed to the Member's authorized committee(s) as of November 30, 1989, and itemized on the committee(s)' year end reports for 1989,

to the unobligated balance, provided that such receivables are actually collected by the committee(s) prior to their termination.

(C) The Member may add to the unobligated balance the value of vendor credits and deposit refunds to which authorized campaign committee(s) are entitled, if these receivables are itemized on Schedule C or D of the committee(s)' 1989 year end reports or in amendment(s) thereto.

(2) If the unobligated balance subsequently falls below its November 30, 1989, level, a qualified Member may use contributions lawfully received or other lawful committee income received after that date to restore the account up to that level.

(3) A qualified Member may convert committee assets which were not held on November 30, 1989, to personal use; however, the fair market value of such assets at the time of conversion shall be counted against the unobligated balance.

(4) Under no circumstances may an amount greater than the unobligated balance on November 30, 1989, be converted to personal use. Should money from subsequent contributions, other committee income, and/or the sale of campaign assets exceed the amount needed to restore the unobligated balance to its November 30, 1989, level, such additional funds shall not be converted to personal use but may be used for the purposes set forth in paragraphs (a), (b), and (c) of this section.

(5) *103d Congress or later Congress:* A qualified Member who serves in the 103d Congress or a later Congress may not convert to personal use any excess campaign or donated funds, as of the first day of such service.

(f) Nothing in this section modifies or supersedes other Federal statutory restrictions or relevant State laws which may apply to the use of excess campaign or donated funds by candidates or Federal officeholders.

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Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

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Part VI

Federal Election Commission

11 CFR Parts 9034, 9036, and 9037
Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[NOTICE 1991-13]

11 CFR PARTS 9034, 9036, and 9037

Matching Fund Submission and Certification Procedures for Presidential Primary Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations setting forth procedures for matching fund submissions by Presidential primary candidates. 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. The changes are necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which were adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The principal changes to the Commission's rules involve monthly submission and certification dates for all candidates, as well as the elimination of letter requests and holdback procedures. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c). A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2 regarding matching fund submission and certification procedures for publicly-funded Presidential primary candidates. On June 26, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to three regulations. 56 FR 29372. One written comment was received from the Internal Revenue Service.

Section 9039(c) of title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

In response to a projected shortfall in the amount of federal funds in the Presidential Election Campaign Fund for the 1992 presidential election cycle, the Department of the Treasury has recently issued new rules regarding payments from the Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The priorities established by the public financing statutes indicate that a shortfall will affect the availability of matching funds for primary candidates before it affects the financing of general election candidates or nominating conventions. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the new Treasury Department rules set aside funds for the nominating conventions and general election candidates prior to depositing funds in the Presidential Primary Matching Payment Account. 26 CFR 701.9006-1 and 701.9037-1. If a shortage of primary funds occurs in a particular month, the Treasury Department regulations set forth a formula for determining the amount each candidate will receive as partial payment and the amount that will be treated as certified for the next month. 26 CFR 702.9037-2. In addition, the new Treasury Department rules change the dates on which federal payments will be made to primary election candidates. For 1992 Presidential primaries, candidates will receive federal payments on a once-a-month basis. 26 CFR 702.9037-2. All candidates will be paid on the same day each month. In previous election cycles, payments were made several times each month.

The changes in the timing of matching fund payments have necessitated corresponding changes to the Commission's certification procedures so that all certifications are made on the same date each month after the beginning of the matching payment period. Given the need for adequate time to review matching fund submissions prior to certification, the Commission expects to set monthly deadlines for receipt of all matching fund submissions near the beginning of each month. In addition, the Commission has recently decided, during limited periods of time, to reject matching fund submissions where the initial sampling indicates a projected dollar value of nonmatchable contributions of more than 15% of the amount requested. These changes are explained in more detail below.

In the event that the projected shortfall does not occur, the Commission sought clarification of whether the Treasury Department intended to return to its previous practice of making payments throughout the month as matching fund certifications are received. The Commission also sought comment as to whether it would be feasible for the Commission and campaign committees to return to the former matching fund submission and certification procedures, either before or during the matching payment period. The Internal Revenue Service's position, as stated in the comment, is that even if there is no shortfall, the new Treasury regulations specify the procedures that will be followed. Thus, the Internal Revenue Service found no conflict between the Commission's proposed rules and the Internal Revenue Code and the regulations thereunder. Consequently, the Commission has decided to adopt the proposed changes to its matching fund submission and certification procedures.

1. Submission Procedures

In previous election cycles, the Commission scheduled candidates to make matching fund submissions on the second and fourth Monday of each month after the beginning of the matching payment period. Resubmissions were scheduled for the first and third Monday. The Commission is now changing the submission schedule so that all candidates will make once-a-month submissions and resubmissions on the same date. On the last two submission dates in the year before the election year and on each submission date after the beginning of the matching payment period, the candidate will be limited to making one submission, and either one resubmission under § 9036.5 or one corrected submission under § 9036.2(c) or (d)(2). The Commission will publish the list of the monthly submission dates and notify the candidates once the Treasury Department has established the payment schedule. Please note that the new monthly submission dates will not affect threshold submissions, which candidates may still make at any time. The monthly submission dates also will not apply to resubmissions made within the five day period for correcting a submission that either failed to meet the good order requirements or that had a high rate of nonmatchable contributions. See revised 11 CFR 9036.4(a), as discussed below.

One consequence of establishing a single submission date each month is that all submissions will need to be full submissions. Thus, 11 CFR 9036.2(b)(2) is being revised to delete the current letter request procedures. In the event of a shortage, this will help to ensure that candidates are paid only the amount to which they are entitled. In addition, 11 CFR 9036.6 is being revised to indicate that the last date for first-time submissions for all candidates is the first Monday in March of the year following the election year. In the past, a candidate's last submission date was either the last Monday in February or the second Monday in March, depending on the candidate's submission schedule.

2. Certification Procedures and Holdback Procedures

The revised rules which follow also change the timing of the Commission's certification of additional payments. Under the previous rules set forth at 11 CFR 9036.2(c)(1), during the Presidential election year, the Commission certified an amount within 5 business days using a holdback procedure. Any additional amount was then certified in either 20 or 25 business days, depending upon the projected dollar value of nonmatchable contributions. These provisions are being revised by eliminating the 5, 20, and 25 day periods, and also by eliminating the use of holdback procedures to determine the amount to be certified to the Secretary of the Treasury. See Federal Election Commission's Guideline for Presentation In Good Order. If a shortfall occurs, the elimination of the holdback procedures is necessary to ensure that the amount certified does not exceed the candidate's entitlement, as determined under the Commission's review procedures. Please note that the order of paragraphs (c) and (d) in § 9036.2 is also being reversed to follow a more logical chronological format.

Under renumbered § 9036.2(d)(1), certifications based on additional submissions after the beginning of the matching payment period will be made at least once a month on the same day for all candidates. Revised § 9036.2(d)(2) indicates that the once-a-month certification dates also apply to submissions after the candidate's date of ineligibility. Section 9036.5(d) is also being amended to provide that certifications of all resubmitted contributions will be made on the same monthly certification dates. In the past, the Commission had certified resubmitted contributions within 15 business days. However, these changes do not affect the timing of certifications of additional submissions that are filed in the year before the Presidential election year. See renumbered 11 CFR 9036.2(c).

3. Commission Review of Submissions

The attached rules at 11 CFR 9036.4 contemplate the continuation of the Commission's previous procedures for reviewing matching fund submissions, with the following modifications. First, committees will be granted five business days, instead of three, to correct submissions that have been rejected from review because they failed to meet the Commission's good order requirements. Section 9036.4(a) is also being revised to indicate that if the matching fund submission is corrected in the five day time period, it will be processed before the next regularly scheduled submission date, and the Commission's certification will be made on the certification date for the original submission. However, if a corrected submission is made after the five day period, it will be reviewed as if received on the next regularly scheduled submission date after it is submitted.

4. High Error Rates

Recently, the Commission decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15% of the amount requested. Please note, however, that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted. Submissions are not considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15% of the amount requested or less. The new policy is reflected in 11 CFR 9036.2 (c) and (d), and 9036.4(a) which follow.

5. Treasury Department Regulations

The final rules which follow add to §§ 9034.1(a), 9037.1 and 9037.2 cross-references to the new Treasury Department regulations. The added language alerts the reader to the possibility that a matching fund certification may not result in full payment by the Treasury Department in the event of a shortage of funds in the Presidential Primary Matching Payment Account. The Treasury Department has established a formula to determine the amount each candidate will receive as a partial payment and the amount that will be treated as certified for payment in the following month.

6. Revised Certifications

The revised rules address another new issue presented by the potential shortfall in the matching payment account. In the event of a shortage of public funds, one consequence of the new Treasury Department regulations could be over a month's delay between certification and payment of all certified matching funds. After a candidate's date of ineligibility, the current regulations require the candidate to have net outstanding campaign obligations as of the date of payment. 11 CFR 9034.1(b). The 1983 Explanation and Justification of this provision indicates that if "the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly." Explanation and Justification of Presidential Primary Matching Fund Rules, 48 FR 5227 (Feb. 4, 1983). In a shortfall situation where there is a longer time period between submission date and payment date, the financial status of a candidate's committee may change significantly. For example, the candidate may wish to raise additional private contributions to pay the debts listed on the NOCO statement more promptly, thereby reducing or possibly eliminating the amount of qualified debt remaining. Consequently, the Commission is adding language at 11 CFR 9034.5(f) that requires all candidates who have not been paid the full amount certified after their dates of ineligibility to submit updated NOCO

statements shortly before the next payment date so that the Commission may revise the previous certifications, when necessary. The candidates and the Secretary of the Treasury will be promptly notified of any revised certifications under 11 CFR 9036.4(c)(2).

Certification of no Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules.

List of Subjects

11 CFR Part 9034

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapter F, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. 11 CFR part 9034 is amended by revising paragraph (a) of § 9034.1 to read as follows:

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5. See also 26 CFR parts 701 and 702 regarding payments by the Department of the Treasury.

* * * * *

3. 11 CFR part 9034 is amended by revising paragraph (f) of § 9034.5 to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(f)(1) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching fund payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the Commission which will be before the next regularly scheduled payment date.

* * * * *

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

4. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

5. 11 CFR part 9036 is amended by revising § 9036.2 to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission. On the last two submission dates in the year prior to the election year and on each submission date after the beginning of the matching payment period, the candidate may not make more than one additional submission, and either one resubmission under 11 CFR 9036.5 or one corrected submission under 11 CFR 9036.2(c) or (d)(2), as appropriate.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a full submission as required under 11 CFR 9036.2(b)(1). The amount requested for matching may include contributions received up to the last business day preceding the date of the request.

(c) *Additional submissions submitted in non-Presidential election year.* The

candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year. If the projected dollar value of the nonmatchable contributions exceeds 15% of the amount requested, the procedures described in 11 CFR 9036.2(d)(2) shall apply, unless the submission was made on the last submission date in December of the year before the Presidential election year.

(d) *Certification of additional payments by Commission.* (1) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, and before the candidate's date of ineligibility, the Commission will review the additional submission and will certify to the Secretary at least once a month on dates to be determined and published by the Commission, an amount to which the candidate is entitled in accordance with 11 CFR 9034.1(b). See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will review each additional submission and resubmission, and will certify to the Secretary, at least once a month on dates to be determined and published by the Commission, and amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission or resubmission exceeds 15% of the amount requested. In the latter case, the Commission will return the additional submission or resubmission to the candidate and request that it be corrected, unless the resubmission was made on the last date for resubmissions in September of the year following the Presidential election year. Corrected submissions and resubmissions will be reviewed by the Commission in accordance with 11 CFR 9036.4 and 9036.5. Submissions and resubmissions will not be considered to be corrected unless the projected dollar value of nonmatchable contributions has been reduced to no more than 15% of the amount requested.

6. 11 CFR Part 9036 is amended by revising § 9036.4 to read as follows:

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* (1) The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein.

(2) For submissions made in the year before the Presidential election year (other than submissions made on the last submission date in that year), and submissions made after the candidate's date of ineligibility, the Commission will stop reviewing the submission once the projected dollar value of nonmatchable contributions exceeds 15% of the amount requested, as provided in 11 CFR 9036.2 (c) or (d), as applicable.

(3) Under either paragraphs (a)(1) or (a)(2) of this section, the Commission will return the submission to the candidate and request that it be corrected in accordance with the applicable requirements. If the candidate makes a corrected submission within 5 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly scheduled submission date, and will certify to the Secretary the amount to which the candidate is entitled on the regularly scheduled certification date for the original submission. Corrected submissions made after this five-day period will be reviewed subsequent to the next regularly scheduled submission date, and the Commission will certify to the Secretary the amount to which the candidate is entitled on the next regularly scheduled certification date. Each corrected submission shall only contain contributions previously submitted for matching in the returned submission and no new or additional contributions.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the requirements of 11 CFR 9036.1(b) and 9036.2 (b), (c) and (d), and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* (1) The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, prior to each subsequent payment date on which the candidate receives payments from any previous certification, the Commission may revise the amount previously certified for payment pursuant to 11 CFR 9034.5(f). The Commission will promptly notify the Secretary and the candidate of any revision to the amount certified.

(d) *Commission audit of submissions.* The Commission may determine, for the

reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

7. 11 CFR part 9036 is amended by revising paragraph (d) of § 9036.5 to read as follows:

§ 9036.5 Resubmissions.

* * * * *

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary at least once a month on dates to be determined and published by the Commission. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

* * * * *

8. 11 CFR part 9036 is amended by revising § 9036.6 to read as follows:

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The last date for first-time submissions will be the first Monday in March of the year following the election. No contribution will be matched if it is submitted after the last submission date, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

9. The authority citation for part 9037 continues to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

10. 11 CFR part 9037 is amended by revising section 9037.1 to read as follows:

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate. A matching fund certification may not result in full payment by the Secretary in the case of a shortfall in the matching payment account. See 26 CFR 702.9037–1 and 702.9037–2.

11. 11 CFR part 9037 is amended by revising § 9037.2 to read as follows:

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received. See 26 CFR 702.9037–2(c) regarding partial payments to candidates in the case of a shortfall in the matching payment account.

Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Committee.

[FR Doc. 91–17611 Filed 7–24–91; 8:45 am]

BILLING CODE 6715-01-M

federal register

Thursday
July 25, 1991

Part VII

Department of Education

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards Under the Program for Children and Youth With Serious Emotional Disturbance

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards Under the Program for Children and Youth With Serious Emotional Disturbance for Fiscal Year 1991

[CFDA No.: 84.237]

PURPOSE: To support projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance, and demonstration projects to provide services for children and youth with serious emotional disturbance.

ELIGIBLE APPLICANTS: The eligible applicants for Priority 1 "Analyzing the Professional Knowledge Base for Students with Serious Emotional Disturbance" are institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

The eligible applicants for Priority 2 "Designing and Implementing a Comprehensive System of Education and Support for Children with Serious Emotional Disturbance" are local educational agencies in collaboration with mental health entities.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) when published in final form the notice of proposed priorities and selection criteria.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities and selection criteria as published in the **Federal Register** on June 19, 1991 (56 FR 28278), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priorities and selection criteria ended on July 19, 1991. No comments were received. Applicants are advised to submit their applications based on the priorities and selection criteria as proposed. If any other changes are made in the final priorities or selection criteria, applicants will be provided the opportunity to amend or resubmit their applications.

Note: The Department is not bound by any estimates in this notice.

APPLICATIONS AVAILABLE: July 25, 1991.

PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (APPLICATION NOTICES FOR FISCAL YEAR 1991)

Title & CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated size of award(s)	Estimated number of awards	Project period in months
Analyzing the professional knowledge base for students with serious emotional disturbance (CFDA 84.237A1).	Aug. 26, 1991	Sep. 5, 1991	$300,000	$150,000 [1] per year	2	Up to 24.
Designing and implementing a comprehensive system of education and support for children with serious emotional disturbance (CFDA 84.237B1).	Aug. 26, 1991	Sep. 5, 1991	$1,500,000	$150,000 [2] for 18 mo.	10 [2]	Up to 48.

[1] Amount listed is the estimated funding level for the first 12 months of the project(s). It is anticipated that the funding level for the following year will be the same.

[2] Amounts listed for both the funding level and the number of projects are estimates for the first 18 months of the projects (or Phase 1 as described in the priority). It is estimated that only three projects will be funded in Phase 2 at a level not to exceed $300,000 for up to 30 months.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3524—M/s/2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD: (202) 732–6153.)

Program Authority: 20 U.S.C. 1426.

Dated: July 22, 1991.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–17708 Filed 7–24–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
July 25, 1991

Part VIII

Proclamation 6316—Korean War Veterans Remembrance Week, 1991

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

Presidential Documents

Title 3—

The President

Proclamation 6316 of July 23, 1991

Korean War Veterans Remembrance Week, 1991

By the President of the United States of America

A Proclamation

In 1950, while Americans were still enjoying a sense of pride and relief following the Allied victory in World War II, our Nation suddenly became engaged in another great struggle for freedom. On June 25 of that year, communist forces of the North launched a ruthless attack against the free Republic of Korea. The United Nations swiftly condemned the invasion and formed the UN Command to repel the aggressor. America's Armed Forces, many of whom had just served during World War II, joined with those of 17 other nations in the ensuing conflict. Forty years before the international effort to liberate Kuwait, these courageous individuals demonstrated the power of collective resolve in the face of lawless aggression.

Addressing the American troops serving in Korea, President Truman declared: "You will go down in history as the first army to fight under a flag of a world organization in the defense of human freedom . . . . Victory may be in your hands, but you are winning a greater thing than military victory, for you are vindicating the idea of freedom under international law." By the time a cease-fire was negotiated at Panmunjom on July 27, 1953, more than 54,000 American servicemen had died to defend the lives and liberty of others. Some 103,000 were wounded, and today 8,000 are still listed as missing in action. This week, we honor our Nation's Korean War veterans and remember in prayer those heroes who made the ultimate sacrifice at places such as Inchon, the Pusan Perimeter, and the Chosin Reservoir.

Veterans of the Korean War can take pride in their legacy. These heroes and their fallen comrades not only helped to restore the freedom of South Korea but also won a decisive victory for the ideals of liberty and self-determination. Today there is hope for peace and reconciliation on the Korean Peninsula, and in just a few months the Republic of Korea will take its rightful place as a member of the United Nations. These promising developments are a monument to each of the brave and selfless Americans and other UN forces who fought in Korea four decades ago for the sake of peace and freedom.

In grateful recognition of our Nation's Korean War veterans, the Congress, by House Joint Resolution 255, has designated the week beginning July 21, 1991, as "Korean War Veterans Remembrance Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 21, 1991, as Korean War Veterans Remembrance Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities in honor of the Nation's Korean War veterans. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 1991, in honor of those Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

[FR Doc. 91-17933
Filed 7-24-91; 1:21 pm]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 143

Thursday, July 25, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

32 CFR

Ch. I 31085, 31537
192 32964
195 32965
199 32965
286b 32965
300 32965
301 32964
352 31537
362 31540
806b 33384
861 30327
Proposed Rules:
153 33218
199 .... 30360, 30887
228 30365

33 CFR

1 30242
88 33384
100 .... 29897-29899, 30507, 31085, 31872-31875, 33707, 33708, 34022
117 30332
165 .... 30334, 30507-30509, 31086, 31876, 32111, 32112, 33708
Proposed Rules:
100 .... 29916, 31879, 32115
117 .... 32151, 34046

34 CFR

361 33148
668 33332
682 33332
Proposed Rules:
361 30620

35 CFR

Proposed Rules:
101 31362

36 CFR

7 30694

37 CFR

Proposed Rules:
201 .... 31580, 32474

38 CFR

21 31331
36 29899
Proposed Rules:
3 30893

39 CFR

Proposed Rules:
265 31363

40 CFR

52 .... 30335, 32511, 32512, 33710-33715
82 30873
141 .... 30264, 32112, 33050
142 .... 30264, 32212, 33050
143 30264
180 .... 29900, 32514
260 32688
261 .... 30192, 32688, 32993
262 30192
264 .... 30192, 30200, 32688
265 .... 30192, 30200, 32688
266 32688
270 .... 30192, 32688
27 .... 30336, 32328, 32688, 33206, 33717, 33866
721 .... 29902, 29903
Proposed Rules:
22 33401
28 29996
52 .... 29918, 31364, 33738
60 33490
79 33228
80 .... 29919, 31148-31176, 32533
86 .... 30228, 32533
136 30519
172 33890
180 33236
185 33236
186 33236
260 .... 30519, 33490
261 .... 30519, 33238
264 .... 30201, 33490
265 .... 30201, 33490
270 33490
271 33490
280 30201
300 31900
721 34047
761 30201
798 32537
799 32292

41 CFR

50-202 32257
101-5 33873
101-40 33876

42 CFR

405 31332
442 30696
484 32967
Proposed Rules:
417 .... 30723, 31597, 33403
431 33403
434 33403
1003 33403

43 CFR

38 33719
5460 33830
5470 33830
6865 32515
Proposed Rules:
11 30367
415 31601
3160 29920
3400 32002
3410 32002
3420 32002
3440 32002
3450 32002
3460 32002
3470 32002
3480 32002
3800 31602
3810 30367
3820 30367
4700 30372

44 CFR

8 32328
64 .... 31337-31339, 34023
65 .... 32329, 32330, 34026, 34027
67 .... 32330, 34028
302 29903
361 32490
Proposed Rules:
67 .... 32490, 34047

45 CFR

Proposed Rules:
233 32152
1160 32155

46 CFR

16 31030
221 30654
Proposed Rules:
586 30373

47 CFR

0 33720
1 33720
2 32474
61 33879
69 33879
73 .... 30337, 30510-30512, 31087, 31545, 31546, 31876, 32113, 32114, 32371, 32372, 32975-32978, 33386, 33387, 33720, 33721
76 33387
80 34028
90 32515
94 30698
97 32515
Proposed Rules:
Ch. I 30373
2 31095
61 33891
69 33891
73 .... 30374, 30375, 30524-30526, 31902, 32158, 32474, 33013, 33413, 33414, 33739, 33740
76 .... 30526, 30726, 33414
90 31097

48 CFR

1 33487
5 33487
8 33487
9 33487
10 33487
14 33487
15 33487
16 33487
17 33487
19 33487
25 33487
27 33487
31 33487
35 33487
36 33487
42 33487
43 33487
44 33487
45 33487
49 33487
52 33487
225 34030
232 31341
252 31341
352 33881
508 33721
510 33721
519 30618
549 33721
1513 32518
1804 32115
1806 32115
1807 32115
1825 32115
1839 32115
1842 32115
1845 32115
1852 32115
1853 32115
Proposed Rules:
10 31844
15 .... 33330, 33826
28 31278
31 33822
33 33892
51 33822
52 .... 31278, 31844, 33330, 33822, 33826
209 32159
242 32159

49 CFR

1 31343
40 .... 30512, 33882
190 .... 31087, 33208
192 .... 31087, 33208
193 .... 31087, 33208
195 .... 31087, 33208
199 .... 31087, 33208
234 33722
1017 32333
1039 31546
1051 30873
1152 32336
1220 30873
Proposed Rules:
571 .... 30528, 32544, 33239
1039 32159

50 CFR

17 32978
611 33208
630 .... 29905, 31347
641 .... 30513, 33883
646 33210
650 30514
651 33884
661 .... 34031, 34032
663 30338
672 .... 30874, 31547, 32119, 32983, 33884
675 .... 30515, 30699, 30874, 32338, 32984, 33210
685 .... 31689, 33211
Proposed Rules:
17 .... 31902, 33241, 33741, 33892
20 32264-32275
23 33894
298 32160
646 32000
642 29920
646 .... 29922, 32000
651 29934
662 33416
663 32165
680 30893
685 .... 30376, 34049

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 15, 1991

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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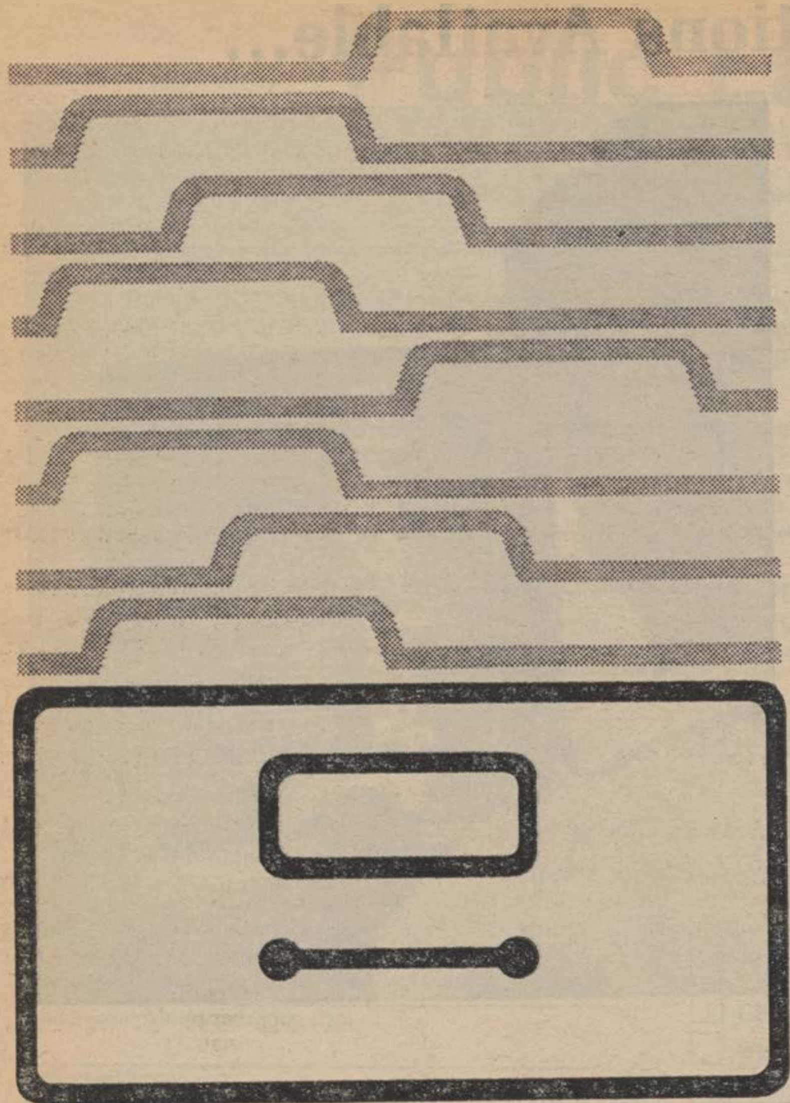

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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